

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF SAN DIEGO
4
5 Coordination Proceeding)
6 Special Title (Rule 1550(b)))
7 In re TOBACCO CASES II)
8)Case No. JCCP No. 4042
9 This document relates to:)
10) DEPOSITION OF
11 The People of the State of)
12 California, et al, v. Philip) MICHELE SNIDER
13 Morris Incorporated, et al.,)
14 Los Angeles Superior Court Case)
15 No. BC 194217;)
16)
17 The People of the State of)
18 California, et al., v.)
19 General Cigar Co., et al, San)
20 Francisco Superior Court Case)
21 No. 996780;)
22)
23 The People of the State of)
24 California, et al, v. Brown &)
25 Williamson, et al., San Francisco)
26 Superior Court Case No. 996781;)
27 and)
28)
29 People of the State of California)
30 v. Tobacco Exporters, et al.,)
31 San Francisco Superior Court,)
32 Case No. 301631)
33)
34 SERVICE LIST "B")
35)
36)

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38 TAKEN ON: Tuesday, June 6, 2000
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40 TAKEN AT: 401 B Street, Suite 1700
41 San Diego, California
42 REPORTED BY: CYNTHIA DEPWEG
43 CSR NO. 3280
44 RPR NO. 036984
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1	I N D E X	
2	WITNESS	EXAMINED BY
3	MICHELE SNIDER	MR. HULBURT
4		PAGE
5		5

6 INSTRUCTION NOT TO ANSWER
7 Pages 33, 39, 59, 63, 92,
8 93, 98, 100, 101
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14	I N D E X	O F	E X H I B I T S	
15	NUMBER			PAGE
16	4036	2-page "Living with Asthma" brochure		55
17	4037	2-page document, first page entitled		62
18		Warning, Tobacco Smoke is Known to		
		the State of California to Cause Cancer		

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1 C E R T I F I C A T E
2 I, the undersigned, do hereby certify that I have read
3 the foregoing deposition and that, to the best of my
knowledge, said deposition is true and accurate (with
the exception of the following changes listed below):

4	Page	Line	Explanation
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MICHELE SNIDER

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1 San Diego, CA, Tuesday, June 6, 2000, 9:04 a.m.

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MICHELE SNIDER,
HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY MR. HULBURT:

Q. Good morning, Ms. Snider. Can you state
your full name and spell it, please.

A. My name is Michele Snider, M-i-c-h-e-l-e
S-n-i-d-e-r.

Q. Have you ever had given a deposition
before?

A. No, I have not.

Q. Let me repeat some of the things that
maybe your attorney has just asked you, but just to make
sure we are on the same page before we get started,
first of all, my name is Chris Hulburt. I'm an attorney
representing the plaintiffs in this lawsuit. You
understand that the oath the court reporter just
administered to you is the same oath you would take if
you were testifying in a courtroom with a judge and a
jury and all the formalities that go with that?

A. Yes.

Q. It has the same potential for penalties of
perjury if, for some reason, your testimony is proven to
be false. Do you understand that?

A. Yes.

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Q. For that reason, it's important that your
testimony be as accurate as possible so we don't create
any unintentional confusion or controversies or
inconsistencies in your testimony, and one way to ensure
that is to make sure that you always fully understand
the question before you answer. So I want to encourage
you, invite you, ask you to let me know at any time if
you don't fully understand my question. All right?

A. Okay.

Q. If you do that, I will do my best to
rephrase it or ask it again or use different words or do

12 whatever I can do to help you understand before you
13 answer. Okay?
14 A. Yes.
15 Q. If you answer the question, then I'm
16 always assuming that you fully understood. Otherwise,
17 you never would have answered. Do you understand that?
18 A. Yes.
19 Q. Okay. Is there anything that you are
20 aware of today that affects your ability to give your
21 best and most accurate testimony?
22 A. No, there is not.
23 Q. Sometimes people are feeling the effects
24 of fatigue or illness or medication. Is there anything
25 like that that you are aware of that might be affecting
26 you today?
27 A. No.
28 Q. Are you an employee of Save Mart?

6

1 A. Yes, I am.
2 MR. KAMMER: Can we go off the record for a
3 minute.
4 (A discussion was held off the record.)
5 BY MR. HULBURT:
6 Q. How long have you been with Save Mart?
7 A. Since April of 1989.
8 Q. And what is your position at Save Mart?
9 A. I'm director of pharmacy.
10 Q. Has that been your position since
11 April 1989?
12 A. No, it has not.
13 Q. When you started in April of '89, what was
14 your position at Save Mart?
15 A. I was a pharmacy store manager.
16 Q. In one particular store?
17 A. Yes.
18 Q. Where was that?
19 A. In Concord, California.
20 Q. How long were you in that position?
21 A. With that Save Mart, I was in that
22 position about seven years.
23 Q. So from April '89 to sometime in 1996?
24 A. Right.
25 Q. And then what happened?
26 A. I started working in the office two days a
27 week as an assistant to the director of pharmacy.
28 Q. On the other days of the week, were you

7

1 still --
2 A. I was still in the store as a manager.
3 Q. And how long were you doing both of those
4 things together?
5 A. About one year.
6 Q. And then what?
7 A. I became director of pharmacy.
8 Q. When did you become the director of
9 pharmacy?
10 A. In May of '9 -- let me think back. It
11 will be -- it was four years this May. So May of '97.
12 No. May of '98. May of -- no, I'm confused.
13 Q. Have you been the director of pharmacy for
14 four years?
15 A. I'm thinking back to -- it was May of '97,
16 yes. Mm-hmm. Four years in May.

17 Q. It will be four years in May 2001?
18 A. Mm-hmm.
19 Q. Is that right?
20 A. Mm-hmm.
21 Q. You have to say "yes" or "no."
22 A. Yes. Sorry.
23 Q. All right. Can you describe for me your
24 educational background, please.
25 A. I graduated from the University of
26 California at Davis with a degree in zoology and a minor
27 in biochem.
28 Q. When was that?

8

1 A. In 1972.
2 Q. Was that a Bachelor of Science?
3 A. Yes, Bachelor of Science.
4 Q. Okay. Did you have any further formal
5 education after that?
6 A. Yes. I entered the University of the
7 Pacific that fall, and I graduated in 1975 from the
8 University of the Pacific with a pharmacy degree, which
9 is a Doctorate of Pharmacy.
10 Q. All right.
11 A. And then I graduated in 1998 from
12 University of San Francisco with a Master's degree in
13 Public Service Administration. It's a Master's of
14 Public Health.
15 Q. All right. Do you have any further formal
16 education?
17 A. No.
18 Q. Did you have to write a thesis for your
19 Master's degree?
20 A. No, I did not. It was test.
21 Q. Are you a licensed pharmacist?
22 A. Yes, I am.
23 Q. In what state?
24 A. In the State of California and the State
25 of Nevada.
26 Q. When did you become licensed in
27 California?
28 A. 1975.

9

1 Q. After completing the University of the
2 Pacific?
3 A. Mm-hmm.
4 Q. "Yes"?
5 A. Yes.
6 Q. And when did you become licensed in
7 Nevada?
8 A. The same time, 1975.
9 Q. All right. And is there a board
10 certification for pharmacy?
11 A. Yes. It's a two-day exam.
12 Q. That's the exam you take in order to get
13 licensed?
14 A. That's correct.
15 Q. Are there any specialties within pharmacy?
16 A. Yes, there are.
17 Q. Do you have any particular specialties?
18 A. No, I do not.
19 Q. Have you ever been licensed in any other
20 states besides California and Nevada?
21 A. No, I have not.

22 Q. Have your licenses in either state ever
23 been the subject of any disciplinary action or
24 investigation that you are aware of?
25 A. No, they have not.
26 Q. Have you ever been a defendant in a
27 lawsuit alleging that you somehow were negligent or
28 committed malpractice in the practice of pharmacy?
10

1 A. No, I have not.
2 Q. Have you ever been convicted of a felony?
3 A. No, I have not.
4 Q. After getting your pharmacy license then
5 in 1975, did you begin working somewhere as a
6 pharmacist?
7 A. Yes, I did.
8 Q. Tell me about that. Let's kind of create
9 a resume' for you.
10 A. When I graduated, I got married, took two
11 weeks' vacation, honeymoon, and started work at Payless
12 Drug Store.
13 Q. Where was that?
14 A. Several locations. Concord, Hayward, San
15 Leandro, Union City, Castro Valley, Pleasant Hill.
16 Q. In each of those locations, were you
17 working as a staff pharmacist?
18 A. Yes, I was.
19 Q. Would that be an accurate description, a
20 staff pharmacist?
21 A. Yes.
22 Q. Did you have any managerial
23 responsibilities in any of those stores at Payless?
24 A. In Hayward, I did.
25 Q. What was your position there?
26 A. One of the pharmacists was ill, so I was
27 temporary filling in as ordering and scheduling,
28 ordering drugs and scheduling the staff.
11

1 Q. Until the managing pharmacist came back?
2 A. Right.
3 Q. Other than that, did you ever have any
4 managerial responsibilities at Payless?
5 A. No.
6 Q. During what period of time did you work
7 for Payless Drug Stores then?
8 A. From 1975 to 1978.
9 Q. Was that a full-time position?
10 A. Yes, it was.
11 Q. And maybe I know the answer, but describe
12 for me in general, what was your job as a staff
13 pharmacist at Payless Drug Stores? What did you do?
14 A. We received the prescription from the
15 patients, took their information such as address, phone
16 number, their drug allergies. We filled the
17 prescriptions, counted, dispensed, labeled medications.
18 This was prior to computers. And we gave the
19 prescriptions to the patients. Sometimes rang things on
20 the register, recommended over-the-counter drugs.
21 Q. Did you counsel patients on health issues?
22 A. No. That was prior -- we did if the
23 patient requested it, but it was prior to OBRA '90, and
24 counseling was not required at the time, and it was not
25 common practice that pharmacists counseled patients.
26 Most doctors, in fact, felt that pharmacists should not

27 counsel.
28 Q. Okay. When you said prior to OBRA '90,
12
1 that's a regulation that now requires a pharmacist to
2 counsel a patient on the effects of the medication
3 they're about to take?
4 A. That's correct.
5 Q. Were there instances at Payless where any
6 customers requested information regarding smoking or
7 secondhand smoke or environmental tobacco smoke?
8 A. It's so long ago, I don't recall.
9 Q. Did you -- can you tell me whether you
10 counseled any patients regarding smoke or smoking-
11 related issues?
12 MR. EATON: Vague as to time.
13 BY MR. HULBURT:
14 Q. At Payless.
15 A. At Payless, I can't recall.
16 Q. What did you do next after Payless then?
17 A. I went to work for Fry's Drugs in Concord.
18 Q. As a pharmacist?
19 A. As a staff pharmacist. And in
20 September -- that was in September of '78. And in
21 February of '79, I became pharmacy manager of that
22 store.
23 Q. And then until what date did you stay at
24 Fry's Drugs?
25 A. Until April of '89 when Save Mart
26 purchased Fry's, and then I was still in the same
27 location, but working for Save Mart.
28 Q. What did it mean to be the pharmacy
13
1 manager then at Fry's? Let's just do Fry's before it
2 became Save Mart.
3 A. Mm-hmm. You were responsible for
4 staffing, hiring your staff, meeting projections for
5 sales and labor, filling prescriptions, counseling
6 patients after a certain time when it was required by
7 law.
8 Q. Well, let me stop you. Before it was
9 required by law, if a patient or a customer asked for
10 information, would the pharmacist provide it?
11 A. Yes.
12 Q. So there would be counseling of patients,
13 but on a request basis only until it was required by
14 law?
15 A. Right.
16 Q. And even after it's required by law, if a
17 customer requests information unrelated to a particular
18 drug that they're buying, the pharmacist still would
19 counsel that patient?
20 A. If they felt comfortable that they had the
21 knowledge to counsel about that situation.
22 Q. Okay. As a pharmacy manager at Fry's, did
23 you have any responsibility for the, what I will say,
24 marketing or promotion of the pharmacy department?
25 A. No, I did not.
26 Q. Once it became a -- I'm sorry. Did you
27 tell me all the things that were your responsibilities
28 as a pharmacy manager at Fry's? I was afraid I might
14
1 have cut you off.
2 A. You're responsible to the State Board to

3 make sure that all rules and regulations are followed
4 for ordering, re-ordering, medications that are used,
5 keeping an adequate inventory, disciplining, appraising
6 your staff once a year, reporting to the store manager
7 any conditions that he would need to be aware of.
8 That's -- that's most of them. I'm sure there were
9 others that I can't recall right now.
10 Q. And then once it became a Save Mart store,
11 you stayed on in the same store as the pharmacy manager?
12 A. That's correct.
13 Q. Did your responsibilities change in any
14 way once the store became the Save Mart store?
15 A. Just who I reported to changed. That was
16 it.
17 Q. All right. Same responsibilities,
18 different boss?
19 A. Right.
20 Q. Let me go back to Payless. While at
21 Payless, was there any written information made
22 available to the customers related to the effects of
23 smoking or secondhand smoke?
24 A. I don't remember giving any written
25 information to any patients when I worked at Payless.
26 Q. On any subjects?
27 A. On any subject.
28 Q. What about at Fry's Drugs; was there any

15

1 written information available for customers related to
2 smoking, the health effects of smoking, or secondhand
3 smoke?
4 A. Not that I am aware of.
5 Q. Was there any -- At Fry's, was there any
6 display of informational brochures on various
7 health-related topics?
8 A. We had a few brochures for blood glucose
9 meters, some diabetic brochures, and some heart
10 brochures about blood pressure. There may have been
11 other manufacturer brochures, but I couldn't name what
12 those were.
13 Q. What do you mean by other manufacturer
14 brochures?
15 A. Sometimes, manufacturers that made drugs
16 give brochures to pharmacies to put on their counter, to
17 display on their counter.
18 Q. A brochure regarding the -- touting the
19 wonderful effects of that drug?
20 A. Mm-hmm.
21 Q. "Yes"?
22 A. Yes. Yes.
23 Q. Okay. I appreciate that. I think, as you
24 caught, I'm trying to focus on just sort of general
25 informational brochures that might be about heart
26 disease or might be about high blood pressure, or it
27 might be about various health-related issues. Were
28 there any brochures like that at Fry's Drugs while you

16

1 worked for Fry's Drugs?
2 A. There may have been brochures, but they
3 weren't Fry's brochures. They were either -- they were
4 probably from manufacturers. And I know that there were
5 some on high blood pressure that were from manufacturers
6 and some diabetic ones. Those are the only ones I know
7 of.

8 Q. As a manager of Fry's Drugs, were you
9 involved in screening those brochures in order to
10 determine whether they would be displayed for the
11 customers?
12 A. Yes.
13 Q. How would you do that?
14 A. I would read the brochure.
15 Q. And did you have some criteria that you
16 would use in order to decide whether that's a brochure
17 we're going to put out for access for the public?
18 A. Yes.
19 Q. What was that criteria?
20 A. If it was recommending a certain drug to a
21 patient who had no knowledge of that condition, we would
22 not put that brochure out. If it was very, very product
23 specific and the patient had no knowledge of that
24 product, we would prefer not to use that on the counter.
25 Q. So what types of brochures would be
26 displayed after your screening?
27 A. A general brochure about what is, say,
28 high blood pressure. What is high blood pressure? What
17
1 can you do about it? How often do you need to check it?
2 Diabetics, who gets diabetes? How do you treat it?
3 What do you need to look for? General health brochure.
4 Q. Was there some sort of rack or
5 something --
6 A. No.
7 Q. -- where those brochures would be placed?
8 A. There was not.
9 Q. It would be just left on the counter?
10 A. There are little counter displays.
11 Q. A little brochure holder, right?
12 A. Right, a brochure holder.
13 Q. I probably already did this, but since
14 we're back in the same place in my mind, I will ask it
15 again. Were there ever any general brochures like what
16 you have now just described that in any way related to
17 smoking or the effects of cigarettes?
18 A. Not that I am aware of.
19 Q. And what does it mean now for you to be
20 the director of pharmacy for Save Mart? What are your
21 responsibilities?
22 A. I'm responsible for operations,
23 purchasing, human resources, advertising, administration
24 in general, and legal, and State Board issues.
25 Q. When you say "legal," do you mean the
26 State Board?
27 A. State Board, federal government, DEA,
28 Department of Justice.
18
1 Q. Are you responsible for the pharmacy
2 operation in all the Save Mart stores?
3 A. Yes, in the stores that have pharmacies.
4 Q. How many -- Do you know how many Save Mart
5 stores there are?
6 A. Yes.
7 Q. How many?
8 A. 84 conventional stores, 14 warehouse
9 stores under the Food Maxx name.
10 Q. And of the 84 conventional stores, how
11 many have pharmacies?
12 A. 27.

13 Q. Are there any pharmacies in the warehouse
14 stores?
15 A. No, there are not.
16 Q. Are the conventional stores called Save
17 Mart.
18 A. Yes. There are some stores called S Mart
19 Foods in the Stockton area.
20 Q. From your perspective, are they the same?
21 A. Yes.
22 Q. A customer might know it as S Mart, but
23 from the internal perspective, S Mart and Save Mart are
24 exactly the same operation?
25 A. That's correct.
26 Q. So do you have any dealings at all with
27 the 14 Food Maxx warehouses?
28 A. Not at all.

19

1 Q. Do you have any dealings at all with the
2 57 conventional stores that have no pharmacies?
3 A. I have gone to store manager meetings to
4 do a presentation about pharmacy, specifically about
5 changes in the labor law, and that was in order to
6 inform the managers that did have pharmacies about the
7 law; but Save Mart tends to transfer managers so they
8 wanted all managers to be aware of the policy.
9 Q. Labor law related to what?
10 A. Overtime.
11 Q. Why were you from pharmacy making a
12 presentation regarding overtime?
13 A. Because our policy regarding overtime for
14 pharmacists had changed because the state law changed in
15 January of 2000.
16 Q. With respect to pharmacists in particular?
17 A. Right. There's a specific law that
18 pertains only to pharmacists.
19 Q. So do you routinely attend the store
20 manager meetings for the Save Mart stores?
21 A. That was the first time I had gone and
22 done a presentation.
23 Q. All right. Do you make presentations to
24 Save Mart stores in order to develop a new pharmacy in a
25 store?
26 A. No, I do not. No.
27 Q. During the time that you have been the
28 director of pharmacy, have any conventional Save Mart

20

1 stores added a pharmacy department to their store?
2 A. Yes.
3 Q. How many?
4 A. Store 49 in Modesto and the Stockton one.
5 Q. When were they?
6 A. The Stockton was October of '98, and
7 January of -- Modesto was January of this year, 2000.
8 Q. Did you play a role in that -- bringing
9 those departments up to full operation?
10 A. Yes.
11 Q. What are your responsibilities with
12 respect to advertising for the pharmacy operations of
13 Save Mart stores?
14 A. Save --
15 Q. Let me stop. If we talk about Save Mart,
16 will that also mean S Mart?
17 A. Yes.

18 Q. So let's just agree to that. Whenever we
19 say Save Mart, that's Save Mart and S Mart?
20 A. Okay.
21 Q. Okay. So what are your responsibilities
22 with respect to the advertising for the pharmacies in
23 Save Mart stores?
24 A. I can place advertising in the weekly
25 circular that comes out to homes. It's the weekly
26 four-fold color brochure.
27 Q. For the newspaper, you mean?
28 A. For the newspaper, right. And I have
21
1 placed ads for diabetic meters, diabetic strips, and
2 blood pressure machines, and that's it. Those are the
3 items that I am responsible for advertising.
4 Q. Those are the only items you have
5 advertised?
6 A. Right.
7 Q. So you have never ever advertised any
8 specific drugs?
9 A. No.
10 Q. Or any over-the-counter medications?
11 A. No, I'm not responsible for
12 over-the-counter medications.
13 Q. Does the pharmacy department have any
14 responsibility for over-the-counter medications at all?
15 A. The only -- not the ones that Save Mart
16 carries. If an item is not carried out front, we may
17 order it.
18 Q. Is there a marketing theme or slogan or
19 phrase or motto that somehow is the Save Mart pharmacy
20 phrase?
21 A. They -- we have had several phrases that
22 have changed over time.
23 Q. Tell me about that.
24 A. I can remember one was, "Fast In, Fast
25 Out," which was for the front check stands, that the
26 checkers would quickly check your order and get you on
27 your way.
28 Then they did "Fast, friendly service,"
22
1 with -- and then "Service with a Smile."
2 Q. Any others?
3 A. Right now, it's "Good Old Fashion
4 Service."
5 Q. These four phrases that you just gave me,
6 are they the phrases for the entire store operation?
7 A. Yes, it is.
8 Q. Are there any phrases, slogans, mottos
9 that the pharmacy department has used?
10 A. No.
11 Q. Some places, on their receipts or bags or
12 whatever, stationery or whatever that comes out of the
13 department, might have a little phrase that goes with it
14 related to the pharmacy operation?
15 A. Mm-hmm.
16 Q. Is there anything like that for Save Mart?
17 A. No.
18 Q. Has there been in the past that you are
19 aware of?
20 A. Not that I am aware of. Not that I
21 recall.
22 Q. Are there any other stores that Save Mart

23 is affiliated with besides Save Mart, S Mart, and Food
24 Maxx?
25 A. No.
26 Q. Since beginning working for Save Mart in
27 April 1989, have there been any informational brochures
28 made available to the customers through the pharmacy
23
1 department with health information?
2 A. Yes, there have.
3 Q. And, for instance, what subjects have
4 those covered?
5 A. We have a set of brochures that cover
6 subjects such as high blood pressure, insomnia, weight
7 loss, asthma, diabetes, and other subjects. Like I
8 can't remember all of them.
9 Q. Smoking?
10 A. No, there's not a brochure for smoking.
11 Q. Heart disease?
12 A. Yes.
13 Q. Cancer.
14 A. I'm not sure. I don't think there's a
15 cancer one.
16 Q. Is there, at Save Mart, some sort of
17 display rack for brochures?
18 A. Some of the stores do have display racks,
19 not all.
20 Q. Okay. Where do the brochures come from
21 that are displayed at Save Mart stores?
22 A. Most pharmacies have a waiting area with a
23 couple of seats or a bench. It's usually adjacent to
24 the pharmacy or across from the pharmacy on an end cap,
25 and the brochures will be in that area.
26 Q. Is there a blood pressure machine there?
27 A. Yes, there is.
28 Q. Check your blood pressure?
24
1 A. Yes.
2 Q. I always sit in that thing.
3 MR. KAMMER: We talked about you the other day.
4 MR. DI SAIA: Yeah.
5 MR. KAMMER: I hope you don't get claustrophobia.
6 BY MR. HULBURT:
7 Q. Okay. Where does Save Mart get the
8 brochures? Do you write them yourselves?
9 A. No, I don't.
10 Q. Or do you obtain them from somewhere else?
11 A. I do. The American Pharmaceutical
12 Association created brochures, which they made available
13 to all pharmacy chains that were members of APhA.
14 Q. And so are there only American
15 Pharmaceutical Association brochures at Save Mart
16 stores?
17 A. No. Some stores have vendor brochures,
18 manufacturer brochures.
19 Q. Like what you described earlier?
20 A. Right.
21 Q. Are you the one responsible for ordering
22 the brochures for the stores?
23 A. For the American Pharmaceutical
24 Association, yes.
25 Q. Is there a particular set that you buy or
26 a kit, or do you order a certain display rack that comes
27 with certain stock brochures? Tell me how that works.

28 A. You can order the brochures printed by
25
1 them if you want, or you can order a CD, which is what
2 we did. We sent the CD to our sign shop, and the sign
3 shop printed the brochures and added our logo to the
4 back of the brochures.
5 If you want, you can order display racks
6 from them, but we did not order the display racks.
7 Q. On the CD, that includes a certain set of
8 brochures?
9 A. It is the exact brochures in format for
10 printing.
11 Q. Right. But -- the CD?
12 A. Oh, yes.
13 Q. In order to order the CD, you are choosing
14 a certain set of brochures?
15 A. Exactly.
16 Q. And it will come on CD format?
17 A. Exactly.
18 Q. How do you describe that set of brochures
19 that you order on the CD?
20 A. I ordered them once. They have done this
21 for two years. It's health-related issues, disease
22 state.
23 Q. How many brochures are on the CD, if you
24 printed all of them?
25 A. I don't know how many.
26 Q. Can you give me your best estimate?
27 A. 20 maybe.
28 Q. And has it been the practice at Save Mart
26
1 to print all the brochures and display them all?
2 A. No. We have the brochures available at
3 our warehouse. The pharmacists in charge are allowed to
4 order the brochures that they feel are appropriate, and
5 they are responsible for displaying them at the store if
6 they wish.
7 Q. Are all 20 -- let's assume that there are
8 20 on the CD. Are all the brochures available at the
9 Save Mart warehouse?
10 A. Yes.
11 Q. Were there any American Pharmaceutical
12 Association brochures that you rejected saying, "This is
13 not a brochure that we're going to use in a Save Mart
14 store"?
15 A. No.
16 Q. Can you tell me the subject of the
17 brochures that Save Mart got from the American
18 Pharmaceutical Association CD?
19 A. Each one?
20 Q. Mm-hmm.
21 A. No, I can't.
22 Q. Can you tell me as many as you can?
23 A. Insomnia, high blood pressure, heart
24 disease, weight loss, asthma, and diabetes. One was
25 what to ask your pharmacist. One was a -- how to keep
26 track of your medications.
27 Q. Do you recall any others?
28 A. No.
27
1 Q. Have you read each of the brochures from
2 the American Pharmaceutical Association?
3 A. I did a couple of years ago when they

4 first came out, yes.
5 Q. In order to decide that you would use
6 them?
7 A. Right.
8 Q. Have the brochures changed?
9 A. The American Pharmaceutical Association
10 has printed another list of brochures, but we elected
11 not to use those, because we still had brochures in the
12 warehouse.
13 Q. Okay. So you're still using from the CD
14 that Save Mart purchased two years ago?
15 A. Correct.
16 Q. Is that right? You got it two years ago?
17 A. We did not purchase it. It is provided
18 free because we are a member and Sav-On is a member of
19 APhA. It was two years ago.
20 Q. Does the heart disease brochure make any
21 reference to the effects of smoking or cigarettes or
22 cigarette smoke as being a contributing cause of heart
23 disease?
24 A. I do not think it does.
25 Q. Does the asthma brochure make any
26 reference to the effects of smoking or secondhand smoke
27 with children relating to asthma?
28 A. You said smoking or secondhand smoke?
28
1 Q. I'll split that up. Someone should have
2 objected to that question.
3 MR. KAMMER: Objection. Compound. You can
4 answer it if you understand it.
5 BY MR. HULBURT:
6 Q. Does the asthma brochure make any
7 reference to smoking?
8 A. I believe it says, "If you smoke, you
9 should quit."
10 Q. Does the asthma brochure make any
11 reference to a relationship between environmental
12 tobacco smoke or secondhand smoke and asthma in
13 children?
14 A. It may. I'm not sure. It may.
15 Q. Is there a relationship between
16 environmental tobacco smoke and asthma, causing asthma
17 in children?
18 MR. EATON: Calls for an expert opinion, lacks
19 foundation.
20 MR. KAMMER: You can answer, if you can.
21 THE WITNESS: I have not seen any definitive
22 documents that -- double-blind studies or whatsoever,
23 you know, that say that that is a problem, the cause. I
24 have read for and against, and I haven't seen any -- any
25 reputable studies that have absolutely proven the fact.
26 BY MR. HULBURT:
27 Q. Has Save Mart ever disseminated any
28 information to the public, suggesting a connection
29
1 between environmental tobacco smoke and asthma?
2 A. I am not aware of any.
3 Q. Has Save Mart ever disseminated any
4 information to the public suggesting a connection
5 between environmental tobacco smoke and heart disease?
6 A. I don't know.
7 Q. Has -- does environmental tobacco smoke
8 cause cancer?

9 MR. EATON: Objection. Lacks foundation, calls
10 for an expert opinion.
11 THE WITNESS: I don't know.
12 BY MR. HULBURT:
13 Q. Has Save Mart ever disseminated any
14 information to the public suggesting that environmental
15 tobacco smoke causes cancer?
16 A. I don't know.
17 Q. Are you aware that the United States EPA
18 has concluded that environmental tobacco smoke causes
19 cancer?
20 A. EPA being --
21 Q. Environmental Protection Agency.
22 A. I'm not aware of that.
23 Q. Are you aware that the federal National
24 Institute of Environmental Health Safety has concluded
25 that environmental tobacco smoke causes cancer?
26 A. No.
27 Q. Has Save Mart ever disseminated any
28 information to its customers regarding environmental
30 tobacco smoke at all?
1 A. I don't know.
2 Q. Do you know what I mean when I use the
3 term environmental tobacco smoke?
4 A. Yes, I do.
5 Q. What do you understand that to be?
6 A. Being in the environment of someone else
7 who is smoking. Not the primary person, but being
8 around the smoke that's in the environment.
9 Q. Who would know whether Save Mart has ever
10 disseminated any information regarding the health
11 effects of environmental tobacco smoke?
12 A. I'm not sure. It would have to be one of
13 the other departments that's responsible for putting
14 information in the stores, which would be advertising,
15 trade and relations, operations. I'm not sure.
16 Q. Has the pharmacy department of Save Mart
17 stores ever disseminated any information to the public
18 regarding the health effects of environmental tobacco
19 smoke?
20 A. No, they have not.
21 Q. Are there other locations in the store
22 besides the pharmacy where health information brochures
23 are displayed or made available in Save Mart stores?
24 A. Not health information brochures per se,
25 but we have recipes sometimes in the store, healthy
26 recipes. I'm not really sure what information or
27 brochures the other departments have other than I know
28 31
1 that there's some recipes available in the stores. Some
2 stores, I think, have an advertising board up front, and
3 I don't know what goes on with the advertising board.
4 Q. Advertising board means what?
5 A. Home for rent, roommate wanted, little
6 postcards that you can put up there. An advertising
7 board.
8 Q. Where customers can post something?
9 A. Mm-hmm.
10 Q. "Yes"?
11 A. Yes. Mm-hmm.
12 Q. When you were at Payless Drug Store --
13 let's go back to the beginning -- was there a smoking

14 policy for the employees of the store at Payless?
15 A. Employees were allowed to smoke at lunch
16 and on their breaks. They were not allowed to smoke at
17 their job.
18 Q. Were they allowed to smoke in the store?
19 A. Yes, they were. In the break room only.
20 Q. Did you, as a pharmacist, ever question
21 that policy or suggest the policies should be altered in
22 some way?
23 A. No.
24 Q. Are you a smoker?
25 A. No.
26 Q. Have you ever been a smoker?
27 A. No, I have not.
28 Q. Did you as a nonsmoker have any concerns

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1 about being in the environment of other smoking
2 employees at Payless Drug Stores?
3 MR. EATON: Beyond the scope of the deposition
4 and designation.
5 MR. KAMMER: I'm going to object to the question.
6 It is. In that sense, I will instruct the witness not
7 to answer.
8 THE WITNESS: Okay.
9 BY MR. HULBURT:
10 Q. At Fry's Drug Stores, was there a smoking
11 policy?
12 A. Yes.
13 Q. What was that?
14 A. The same as Payless, up and to the point
15 when the State said that there would be no smoking in
16 the store. And I have no idea what year that happened.
17 Q. So when the State said that you cannot
18 smoke in a public place --
19 A. Right.
20 Q. -- then Fry's changed its policy?
21 A. Right, and the policy was employees were
22 not allowed to smoke in the store at all.
23 Q. Before that, at Fry's, employees could
24 smoke in the break room?
25 A. In the break room, mm-hmm.
26 Q. While at Fry's, did you ever challenge or
27 question that policy from the perspective of a
28 pharmacist raising any health concerns about having

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1 nonsmoking employees in the same environment with
2 smoking employees?
3 A. No.
4 Q. Does Save Mart have a policy with respect
5 to smoking in the workplace?
6 A. Yes.
7 Q. What is that?
8 A. Employees are not allowed to smoke in the
9 store.
10 Q. Is that as a result of the state law?
11 A. With Save Mart, I'm not sure, because the
12 law was in effect when I came to work for them.
13 Q. As a pharmacist, do you belong to any
14 associations?
15 A. Yes, I do.
16 Q. Professional associations?
17 A. Yes.
18 Q. What are they?

19 A. The American Pharmaceutical Association,
20 the California Pharmacists Association, the National
21 Association of Chain Drug Stores, National Council for
22 Prescription Drug Programs, Food --
23 MR. EATON: Could you say that last one again?
24 THE WITNESS: It's NCPDP. National Council for
25 Prescription Drug Programs.
26 MR. KAMMER: It's easy for you to say.
27 THE WITNESS: And the Food and Marketing
28 Institute, Pharmacy Services Committee.

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1 BY MR. HULBURT:
2 Q. Do you receive from any of these
3 associations periodic journals or newsletters or
4 publications?
5 A. Yes.
6 Q. Do each of them have their own
7 publications?
8 A. Yes, they do.
9 Q. Is it your practice to routinely read the
10 publications that come from these associations you
11 listed?
12 A. I read them. Sometimes I just scan them
13 and decide what's important to read thoroughly.
14 Could I get some water, please.
15 MR. KAMMER: Yes, you may. Go off the record.
16 (A recess was taken.)

17 BY MR. HULBURT:
18 Q. You specifically mentioned a committee of
19 the Food and Marketing Institute, and so I want to ask
20 you if you are on any committees or have been on any
21 committees in any of the other associations?
22 A. No, I have not.
23 Q. Have you held any offices in any of --
24 have you been an officer in any of those associations?
25 A. No, I have not.
26 Q. What is the Journal of the American
27 Pharmaceutical Association?
28 A. It's their publication magazine.

35

1 Q. What's it called?
2 A. Journal of the American Pharmaceutical
3 Association. Real creative.
4 Q. What is the -- what's the title of the
5 journal for the California Pharmacists Association?
6 A. I believe it's California Pharmacists.
7 Q. Okay. And the same question for the
8 National Association of Chain Drug Stores.
9 A. They just -- they put out -- they don't
10 put out a magazine. They have an executive newsletter,
11 a color, four-page brochure that's printed, I think,
12 monthly. An executive newsletter.
13 Q. And the same question for the National
14 Council of Prescription Drug Programs?
15 A. They have a quarterly magazine. It's
16 probably eight pages or so. And I do -- I don't
17 remember what the name of that one is.
18 Q. And the Food and Marketing Institute, does
19 it have a journal?
20 A. No. They have -- well, the pharmacy part
21 of it. I'm not aware of the other part of it. I mean
22 Food and Marketing Institute is way beyond pharmacy, but
23 the pharmacy part of it has a newsletter that they put

24 out, I believe, quarterly; and I don't know the name of
25 the newsletter.

26 Q. What does it mean to be a member of the
27 Pharmacy Services Committee? Does that mean you attend
28 committee meetings?

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1 A. Right.

2 Q. You're active in that association?

3 A. There is a committee that plans and gets
4 speakers for an annual meeting, and I'm on that
5 committee. We determine the meeting parameters.

6 Q. What -- how would you describe what the
7 Food and Marketing Institute, Pharmacy Services
8 Committee does other than have an annual meeting and
9 have speakers? What's the focus? What's the subject
10 area? What's the areas of interest of that committee?

11 A. The members of the association are all
12 grocery stores. The focus is on food and anything that
13 relates to food.

14 Q. And for the Pharmacy Services Committee,
15 the focus is on pharmacies in grocery stores?

16 A. That's correct.

17 Q. So your issues that your committee deals
18 with are what?

19 A. Some legal issues. We're concerned about
20 the different state laws that are being introduced about
21 pharmacy, about benefits, about healthcare, about
22 Medicare, transmission of claims, reconciliation of
23 claims, things like that.

24 Q. Have there ever been any articles in the
25 Pharmacy Services Committee newsletter related to the
26 health effects of cigarettes?

27 A. I don't think so. That's not their scope.

28 Q. How about related to the health effects of
37 environmental tobacco smoke?

2 A. No, I don't think so.

3 Q. Have there ever been any presentations or
4 panels or meetings or speakers at any of the Pharmacy
5 Services Committee annual meetings related to
6 cigarettes, smoking, secondhand smoke, any issues
7 related to cigarettes?

8 A. Not since I have been a member.

9 Q. Have you, as a pharmacist, ever questioned
10 the notion of selling cigarettes in one part of your
11 store and selling remedies for health ills caused by
12 cigarettes in another part of the store?

13 MR. EATON: Assumes facts not in evidence,
14 argumentative.

15 MR. KAMMER: You may answer.

16 THE WITNESS: No, I have not.

17 BY MR. HULBURT:

18 Q. Have you ever considered that, thought
19 about that?

20 A. Yes.

21 Q. Do you find that, as a professional
22 pharmacist, do you find that professionally inconsistent
23 for you; that on the one hand, you're in the business of
24 selling drugs and products and health remedies, and on
25 the other hand, your operation is always in a store that
26 is selling cigarettes which are prone to cause health
27 evils?

28 MR. KAMMER: I'm going to object to the question

1 as beyond the scope of the deposition notice and
2 instruct the witness not to answer.

3 BY MR. HULBURT:

4 Q. Has that ever been an issue that you
5 struggled with in your mind at all?

6 MR. KAMMER: Same objection. Same instruction.

7 BY MR. HULBURT:

8 Q. When you were the pharmacy manager at the
9 Save Mart -- at the Save Mart store, did you attend the
10 store manager meetings?

11 A. Very rarely.

12 Q. Was that one of the responsibilities of
13 the pharmacy manager, to attend store manager meetings?

14 A. If -- It wasn't a requirement, but if it
15 were possible, they would like you to attend. The
16 reason I didn't was they were on Monday at 12:00, our
17 busiest time of the week.

18 Q. At any of the store manager meetings that
19 you attended at Save Mart, was there ever any discussion
20 regarding the cigarette sales?

21 A. No.

22 Q. Or advertising or promoting or marketing
23 or anything related to cigarettes?

24 A. No.

25 Q. Have you at Save Mart ever had any
26 discussions with any other Save Mart employees regarding
27 cigarette sales? And I say that as broadly as possible.
28 Sales, marketing, advertisement, promotion, anything

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1 related to cigarettes at Save Mart stores.

2 A. No.

3 Q. Have you ever read any articles in the
4 Journal of the American Pharmaceutical Association
5 related to the health effects of cigarettes?

6 A. Yes.

7 Q. Do you recall something specifically?

8 A. About cancer, lung cancer, from
9 cigarettes.

10 MR. EATON: I missed it.

11 MR. HULBURT: Cancer and lung cancer.

12 MR. EATON: Thank you.

13 BY MR. HULBURT:

14 Q. Have you ever read anything in the
15 American Journal of Pharmaceutical Association regarding
16 the health effects of environmental tobacco smoke?

17 A. I believe they recently had an article,
18 but I haven't read it. One of the most recent issues.
19 I'm behind in my reading schedule.

20 MR. KAMMER: So are we all.

21 BY MR. HULBURT:

22 Q. Same idea then with the California
23 Pharmacists. Have you ever read any articles in the
24 California Pharmacists regarding the health effects of
25 cigarettes or environmental tobacco smoke?

26 A. I'm sure I must have, but I can't recall.

27 Q. Do you save the journals after you read
28 them, or do you read them and throw them away?

40

1 A. About a year, and then I toss them.

2 Q. Do you clip articles?

3 A. No.

4 Q. Of the brochures that came from the

5 American Pharmaceutical Association, when you -- you
6 read each of those brochures before deciding that,
7 "We'll put them in our stores"?
8 A. That's correct.
9 Q. What was your purpose in reading them?
10 A. To find out if there were any specific
11 drugs mentioned in there or any proposals for patients
12 to switch drugs that they were presently taking.
13 Q. Okay. So you're trying to make sure that
14 these brochures are not just marketing tools for some
15 drug maker?
16 A. Correct.
17 Q. Did you read the brochures for accuracy?
18 A. I'm not an expert on each one of those
19 subjects, but APhA had hired experts to write the
20 brochures. I did read them to see if they were
21 reasonable.
22 Q. Did you make your own determination that
23 the medical substance of the brochures was accurate?
24 A. Within my knowledge, yes.
25 Q. Were you relying on the American
26 Pharmaceutical Association with respect to the accuracy
27 of the brochures?
28 A. That is correct.

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1 Q. And you believe that they had experts who
2 researched and wrote the brochures?
3 A. That's correct.
4 Q. How do you know that?
5 A. I remember reading, when we got the --
6 before we ordered the brochures, about who had written
7 the brochures. I remember reading that. Experts in the
8 field.
9 Q. Some promotional letter --
10 A. Right.
11 Q. -- from the APhA
12 A. Right.
13 Q. -- telling you about this CD available?
14 A. Right.
15 Q. Do you know who they were that were the
16 experts that supposedly wrote the brochures?
17 A. No, I do not.
18 Q. If a customer in Save Mart store -- strike
19 that.
20 Are there any Save Mart policies and
21 procedures regarding how a pharmacist is supposed to
22 respond to a customer's question regarding general
23 health information?
24 MR. EATON: Vague.
25 THE WITNESS: Yeah. Could you repeat it?
26 BY MR. HULBURT:
27 Q. I'm trying to start at the biggest,
28 broadest level first, which is, is there some policy or

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1 procedure regarding --
2 A. How to answer a question?
3 Q. Yes.
4 A. No.
5 Q. Pharmacists communicating with customers
6 regarding health-related questions?
7 A. No.
8 Q. Are there policies and procedures for the
9 pharmacy department?

10 A. Yes, there are policies and procedures.
11 Q. Within the policies and procedures, are
12 there any policies and procedures related to
13 communicating with the customers?
14 A. There is a policy and procedure on
15 counseling patients on their prescription medications.
16 Q. Because of the law?
17 A. Right.
18 Q. How about counseling patients on health
19 questions unrelated to a specific prescription?
20 A. No, there is no policy.
21 Q. So how does a pharmacist at Save Mart know
22 how to handle that situation?
23 MR. EATON: Vague, incomplete hypothetical.
24 THE WITNESS: I wouldn't know.
25 BY MR. HULBURT:
26 Q. It's left to their discretion?
27 A. Mm-hmm.
28 Q. "Yes"?

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1 A. Yes.
2 Q. Has Save Mart, as a company, given any
3 guidance to its pharmacists as to how to respond to a
4 customer's question that is not specifically related to
5 the prescription?
6 A. No. No.
7 Q. Does Save Mart participate in any sort of
8 1 (800) program where a customer can call a number to
9 get information?
10 A. Yes, we have a 1 (800) number.
11 Q. What is that? Tell me about that.
12 A. It's a 1 (800) number where customers can
13 call, either with compliments or complaints, and there's
14 two people that staff the phones; and then the comments
15 are transcribed and sent to the department that's
16 responsible.
17 Q. Right. So that's sort of a customer
18 service complaint number?
19 A. Right. Right.
20 Q. Is there a 1 (800) number that a customer
21 can call to get health information?
22 A. No, there is not.
23 Q. Some stores, I understand, have a program
24 called Ask the Pharmacist, where they call some 800
25 number to talk to a pharmacist?
26 A. Mm-hmm.
27 Q. Do you know about that?
28 A. I'm aware of that.

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1 Q. Has Save Mart ever participated in that
2 program?
3 A. No, we have not.
4 Q. Has Save Mart ever participated in a
5 program similar to that, where Save Mart is promoting
6 the idea of you can call some number and you can get
7 health-related information?
8 A. No.
9 Q. Before you started using the American
10 Pharmaceutical brochures two years ago, were there
11 brochures, general health information brochures, at Save
12 Mart stores?
13 A. Not that I am aware of, no.
14 Q. Is that something that you would have been

15 aware of as a pharmacy manager?
16 A. As a pharmacist, I would have known that
17 there were brochures sent from the corporate office to
18 be handed out, yes, and I don't remember any.
19 Q. Before the APhA brochures, was each
20 individual pharmacy department permitted to obtain their
21 own brochures and display their own brochures?
22 A. Yes, they were.
23 Q. So if a pharmacist or a pharmacy manager
24 wanted to get some brochures from some source and put
25 them out on a rack, they had the discretion, the
26 authority, to do that?
27 A. That's correct.
28 Q. Did you ever do that as a pharmacy manager

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1 in your store at Save Mart?
2 A. I ordered some from the American Heart
3 Association once.
4 Q. What did you get from the American Heart
5 Association?
6 A. Brochures about high blood pressure.
7 Q. Any others?
8 A. No. Those are the only ones I remember
9 ordering.
10 Q. Was that one brochure?
11 A. It was a stack of, like, 100 to put by our
12 blood pressure machine. One brochure.
13 Q. I understand you got several copies of one
14 brochure?
15 A. Right.
16 Q. Your reason for getting that was?
17 A. Because we had a blood pressure machine, I
18 felt the patients needed to know more about what high
19 blood pressure meant.
20 Q. Other than the American Heart Association
21 high blood pressure brochure, did you ever get any other
22 brochures for your department?
23 A. That -- wait a minute. That was not an
24 American Heart -- wait a minute. Yeah, that was
25 American Heart Association. I thought you said
26 pharmaceutical. It was an American Heart Association
27 brochure. So repeat the last question.
28 Q. Other than that, did you get any other

46

1 brochures for your department as a pharmacy manager?
2 A. I received brochures from manufacturers on
3 diabetes machines.
4 Q. We talked about that.
5 A. Yeah.
6 Q. Other than that?
7 A. No.
8 Q. Currently, since Save Mart has been using
9 the APhA brochures, are the pharmacists still allowed to
10 go get their own brochures to create their own displays?
11 A. Yes, they are.
12 Q. Do they?
13 A. Some of them do.
14 Q. Can you give me some examples of some
15 brochures that you know are displayed in Save Mart
16 stores that individual pharmacists or pharmacy managers
17 are obtaining to display for their customers?
18 A. There's one about how to handle your
19 insurance company for the patients. One of the stores

20 has some brochures from the American Heart Association,
21 American Diabetes Association, and the American Lung
22 Association.

23 Q. On what subjects?

24 A. On the American Heart Association, heart
25 disease. American Diabetes Association, it's about, I
26 think -- I believe it talks about the difference between
27 juvenile diabetes and adult onset diabetes and what are
28 the symptoms. And the American Lung Association talks
47
1 about asthma.

2 Q. And in what store is that?

3 A. I know that it's -- Store 73, L'Amour, has
4 it, but I'm not sure of other stores that have it.
5 There may be others, but I'm not sure.

6 Q. Is it the L'Amour store that has the lung
7 Association, Diabetes Association, and the Heart
8 Association brochures?

9 A. Mm-hmm.

10 Q. "Yes"?

11 A. Yes.

12 Q. I want to say how do you know? Do you
13 have -- do you review the brochures that are going to be
14 displayed in every store?

15 A. No. I do inspections of the store. And
16 when I am there, I look at the brochures that they have
17 on display.

18 Q. How often do you inspect each store?

19 A. I try to inspect each store annually.

20 Q. And have you been successful in doing
21 that?

22 A. Almost.

23 Q. So on average, you get around to each
24 store about once a year?

25 A. That's correct.

26 Q. Does a pharmacy need to get some sort of
27 approval from you or anybody else in order to get a
28 brochure other than the American Pharmaceutical
48
1 brochures to be displayed?

2 A. No, they do not.

3 Q. So they can do that on their own?

4 A. Right.

5 Q. Can you give me a sense of the chain of
6 command that kind of -- the hierarchy in which you fit?
7 We have got you as the director of pharmacy. And so
8 above you is whom?

9 A. I report to Cecil Russell, who is the
10 director of marketing, and he reports to Bob Piccinini,
11 the owner of the company.

12 Q. And then below you is what? Pharmacy
13 managers?

14 A. Pharmacy managers, right.

15 Q. Is that the next level below you? They
16 report to you?

17 A. Well, we have a few corporate office
18 employees that report to me, a host administrator for
19 our computer system, a help desk person, again, for our
20 computer system, and a pharmacy administrator who helps
21 me with purchasing and contracts.

22 Q. Okay. And they're in the office with you?

23 A. They're in the office, right.

24 Q. Where are you? I should have asked you

25 that earlier. What's your business address?
26 A. 1800 Standiford, S-t-a-n-d-i-f-o-r-d,
27 Avenue in Modesto.
28 Q. Is that the corporate headquarters of Save
49
1 Mart?
2 A. Yes, it is.
3 Q. And so you have your office support staff,
4 and then in the field, the next step below you of people
5 that report to you is what?
6 A. Pharmacy managers.
7 Q. And then a pharmacy manager has its
8 pharmacy staff?
9 A. That's correct.
10 Q. How many pharmacists are there employed by
11 Save Mart?
12 A. About 80.
13 Q. Is that an accurate description? Are the
14 pharmacists employed by Save Mart, or are they
15 independent contractors?
16 A. They're all employees of Save Mart.
17 Q. Are there other licensed professionals in
18 the pharmacy department besides pharmacists?
19 A. Yes, there are.
20 Q. What are they?
21 A. Pharmacy technicians.
22 Q. How many pharmacy -- are they employed by
23 Save Mart, also?
24 A. Yes, they are employed by Save Mart.
25 Q. How many pharmacy technicians are employed
26 by Save Mart?
27 A. Full and part-time, probably 40.
28 Q. What is the territory of Save Mart stores?
50
1 A. The -- they run from Lodi, mainly in the
2 Central Valley, from Lodi down to south of Bakersfield,
3 Tehachapi, and then there are a few stores in the East
4 Bay and in San Jose. But most of them are in the
5 valley, Central Valley.
6 Q. All California?
7 A. All in California, right.
8 Q. In order to be a pharmacist or a pharmacy
9 technician at a Save Mart store, do you have to be
10 licensed in California?
11 A. The pharmacists are licensed. The
12 technicians are registered, yes, in California.
13 Q. In California.
14 What does it mean to be a registered
15 pharmacy technician? What is that position?
16 A. That you have worked a certain -- there's
17 two ways to become a technician. One is to get
18 on-the-job training in a pharmacy, a certain number of
19 hours that a pharmacist signs off on. Then you get
20 fingerprinted and signed up for the board, and they give
21 a permit or license. I'm not sure what they call it.
22 The other method is if you go to tech
23 school. Some of the JCs have tech schools. There's
24 tech schools in Modesto and Stockton and different
25 cities. And then you apply to the board after you have
26 graduated from tech school, and they will give you your
27 license. Your registration, I guess, is what they call
28 it.

1 Q. What is the scope of practice of a
2 registered pharmacy technician?
3 A. The technician is allowed to enter
4 information into the computer system under the
5 supervision of the pharmacist. They are allowed to
6 count, pour, lick, and stick, and they -- Everything
7 that they do is approved by the pharmacist after they do
8 it.
9 Q. When you say enter information in the
10 computer, you're talking about a customer's prescription
11 record?
12 A. Right. They can enter the customer's
13 information, the insurance information. They can also
14 enter in the information from a prescription itself, the
15 drug, the directions, quantity, and then they can
16 process the prescription on the computer system.
17 Q. Do you require that the Save Mart
18 pharmacists belong to any professional associations?
19 A. No, we do not.
20 Q. Are they free to join whatever they want
21 to join?
22 A. Yes, they are.
23 Q. Does Save Mart pay for any professional
24 memberships for the pharmacists?
25 A. No, we do not.
26 Q. Does Save Mart have any guideline policy,
27 procedure, practice related to the dissemination of
28 information regarding environmental tobacco smoke?

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1 A. Could you repeat that?
2 Q. Yeah. Does Save Mart have any policy,
3 procedure, guideline, practice related to the
4 dissemination of information regarding environmental
5 tobacco smoke?
6 A. As Save Mart as a company, I'm not aware
7 of any.
8 Q. How about the pharmacies?
9 A. No, the pharmacies do not.
10 Q. What did you do in order to prepare for
11 your deposition today?
12 A. I met yesterday with my lawyers and
13 discussed what was going -- what was going to happen
14 here today.
15 Q. Did you do anything else, speak with --
16 A. I reviewed -- hmm? Speak with what?
17 Q. Did you do anything else?
18 A. I reviewed the APhA brochures, the ones
19 that I had sent down.
20 Q. Which ones?
21 A. The APhA brochures.
22 Q. All 20 of them?
23 A. Quickly. I pulled them out of the file,
24 glanced, and sat them down.
25 Q. Those are brochures that you sent to your
26 lawyers --
27 A. Right.
28 Q. -- at some other time?

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1 A. Mm-hmm.
2 Q. "Yes"?
3 A. Yes. I sent them down last week.
4 Q. Okay. So when was the last time that you
5 reviewed the APhA brochures?

6 A. Last week, before I sent them down, I
7 quickly scanned through them.
8 Q. In that review, did you see any mention
9 whatsoever related to cigarettes or smoking or cigarette
10 smoke, environmental tobacco smoke?
11 A. I saw two mentions of cigarette smoke.
12 Q. Where?
13 A. One in the asthma, and one in the heart.
14 Q. What did they say about asthma and
15 cigarettes?
16 A. If you smoke, you should stop.
17 Q. Anything else in the asthma brochure?
18 A. I don't recall.
19 Q. What did it say about heart?
20 A. Don't smoke.
21 Q. Is that advice that you agree with as a
22 pharmacist?
23 A. Yes.
24 Q. Do you have those brochures? They weren't
25 produced?
26 MR. KAMMER: I sent the asthma one over to you
27 yesterday. The other one just says smoke. Smoking.
28 And that's not, you know, a warning concerning ETS

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1 within the category of documents that were in the
2 production.
3 MR. HULBURT: Okay. I didn't -- I don't have --
4 MR. KAMMER: Let me see if I have it. The only
5 one I sent you is the asthma because it's the only one
6 that says environmental tobacco smoke. I may have a
7 copy.
8 MR. HULBURT: All right. In fact, Brian told me
9 yesterday that there was no --
10 MR. KAMMER: I personally found this reference
11 late yesterday afternoon and sent it over to you
12 immediately.
13 MR. EATON: Thank you.
14 MR. HULBURT: Thank you.
15 MR. KAMMER: We missed it in the other review.
16 MR. HULBURT: Okay. Let's mark this as
17 Exhibit 4036.
18 (Plaintiffs' Exhibit No. 4036 was marked.)
19 BY MR. HULBURT:
20 Q. Is this a copy of the APhA asthma brochure
21 that's displayed in the Save Mart brochures?
22 A. Yes. It's a little different, because
23 it's a tri-fold brochure and in color.
24 Q. I understand this is a photocopy of the
25 tri-fold?
26 A. Yes.
27 Q. If we folded it, it looks like this,
28 right?

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1 A. That's right. That's right.
2 Q. If we folded it, the back of the brochure
3 is where you have printed -- or Save Mart has printed
4 its own logo --
5 A. That's correct.
6 Q. -- to kind of customize the brochure?
7 A. That's correct.
8 Q. Next to that says Astra. What is Astra?
9 A. Astra is a drug company.
10 Q. And so why is Astra on here with the APhA

11 and Save Mart Supermarkets?
12 A. Astra provided funds to APhA to help put
13 the funding for the brochures as a health service for
14 customers.
15 Q. So in this Living with Asthma brochure
16 that comes from the American Pharmaceutical Association
17 under the section, "What Causes my Asthma?" it says,
18 "Other things in your world referred to as," quote,
19 'triggers,' end quote, "don't cause asthma, but they
20 can make you more susceptible to experiencing symptoms.
21 Examples of triggers are passive smoking," and others.
22 They list others.
23 So is that the reference that you're
24 referring to related to smoking and asthma?
25 A. Yes, it is.
26 Q. Do you know where that information came
27 from to be included in this brochure?
28 A. No, I do not.

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1 Q. And you did nothing to confirm the
2 accuracy of that statement, did you?
3 A. No.
4 Q. Is it a statement that you believe to be
5 true?
6 MR. EATON: Calls for an expert opinion, lacks
7 foundation.
8 MR. KAMMER: You can answer, if you can.
9 THE WITNESS: Cigarette smoke, I believe, can
10 make asthma worse.
11 BY MR. HULBURT:
12 Q. Does Save Mart pharmacies promote
13 themselves in a way to try to create a sense of trust
14 and confidence in its customers?
15 A. Yes.
16 Q. And is part of the mission -- for lack of
17 a better word, part of the mission of the Save Mart
18 pharmacies to create a sense in the customers that Save
19 Mart pharmacy is a place to go for health information?
20 A. We haven't really done that, no.
21 Q. Is there a mission statement for Save Mart
22 pharmacies?
23 A. No, there is not.
24 Q. Is there a mission statement for Save
25 Mart?
26 A. Yes.
27 Q. What is it?
28 A. Save Mart will provide a safe, secure

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1 environment for our customers and -- I don't know all
2 the words, but basically --
3 Q. It's like a scout motto. You're supposed
4 to remember the scout motto.
5 A. Based on four things: Quality, service,
6 freshness, store conditions and price and value, and
7 then our people are the base, you know, the employees.
8 Q. All right.
9 MR. KAMMER: You pass.
10 MR. DI SAIA: A law firm's mission.
11 BY MR. HULBURT:
12 Q. Describe for me what is a Save Mart store.
13 I have never seen a Save Mart store. So tell me. What
14 is a Save Mart store?
15 A. A Save Mart store is a full service

16 grocery store with perimeter departments that include
17 pharmacy, deli, bakery, full service bakery and deli.
18 Some of our stores have areas where you can actually eat
19 in the store. Fish departments along with the meat
20 department.

21 Some of our stores have alternative health
22 food sections in them now. It's -- it varies though.
23 You know, some of our older stores are old traditional
24 smaller groceries, and the newer stores are full
25 service, upscale groceries.

26 Q. Are S marts the same?

27 A. Yes.

28 Q. All right. Does environmental tobacco

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1 smoke kill?

2 MR. EATON: Objection. Lacks foundation, calls
3 for an expert opinion, argumentative.

4 MR. KAMMER: Objection.

5 MR. DI SAIA: Outside the scope.

6 MR. KAMMER: Beyond the scope of the deposition.
7 I will instruct the witness not to answer.

8 BY MR. HULBURT:

9 Q. Has Save Mart ever made that statement to
10 any -- to the public, that environmental tobacco smoke
11 kills?

12 A. I'm not aware. I don't know.

13 Q. Does environmental tobacco smoke retard
14 the growth of the respiratory system?

15 MR. EATON: Same objections.

16 MR. KAMMER: Same objection with instruction not
17 to answer.

18 BY MR. HULBURT:

19 Q. Has Save Mart ever disseminated that
20 statement to the public?

21 A. I don't know.

22 Q. Does -- do the Save Mart pharmacies have
23 information regarding the health effects of
24 environmental tobacco smoke that they have not made
25 available to the public?

26 A. No, they do not.

27 Q. Have any other Save Mart stores ever used
28 a brochure from the American Lung Association related to

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1 cancer?

2 A. I don't know.

3 Q. Would you know if that had happened since
4 you have been the pharmacy director?

5 A. Like I said before, I don't preview all
6 the brochures that are in the store; so I don't know.

7 Q. We made that clear, that you don't preview
8 them. If there are brochures that are displayed, are
9 you notified of that in some way, whether you
10 pre-approved it or not? Do you get some list that tells
11 you, "Here are the brochures that we're displaying at
12 this current time"?

13 A. No, I do not.

14 Q. So the only way you would know the
15 brochures that are actually being displayed is when you
16 do your inspections approximately once a year?

17 A. That's correct.

18 Q. Is there anyone else who would know what
19 brochures are on display at any given time in each of
20 the stores?

21 A. No, not unless they do an inspection.
22 Q. Does Save Mart have a web site?
23 A. No, they do not.
24 Q. When you order your products for the
25 pharmacy department, do you order from some distributor,
26 or do you order direct from the manufacturers?
27 A. Most of our pharmaceuticals come through a
28 wholesaler, Bergen Brunswig.

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1 Q. How do you spell that?
2 A. B-e-r-g-e-n, second word, capital
3 B-r-u-n-s-w-i-g.
4 Q. Does Bergen Brunswig provide any health
5 information on brochures for use in your stores?
6 A. No, they do not.
7 Q. Do you know what Yosemite Wholesale is?
8 A. Yes. It's a warehouse that we own in
9 Merced. Save Mart.
10 Q. It's a Save Mart warehouse?
11 A. Correct.
12 Q. And so that's not a warehouse store.
13 That's a warehouse supply for the stores?
14 A. Right. They distribute product from
15 manufacturers to the stores.
16 Q. Do any of the pharmacy products come from
17 the Yosemite Warehouse?
18 A. We don't -- we do not warehouse any
19 pharmaceuticals there.
20 Q. How about other things that might be sold
21 through the pharmacy department; is there anything
22 that's warehoused in the Yosemite --
23 A. That is sold, no, huh-uh. We have
24 supplies, bags, and the brochures I have talked about.
25 Q. Okay.
26 A. Some tape, pharmacy tape.
27 Q. The APhA brochures are at the Yosemite
28 Wholesale Warehouse?

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1 A. That's correct.
2 Q. Let me show you what I will mark as
3 Exhibit 4037, which are some documents produced earlier
4 in the case, Bates No. SMS 1 and 2.
5 A. Mm-hmm.
6 (Plaintiffs' Exhibit No. 4037 was marked.)
7 BY MR. HULBURT:
8 Q. Are you familiar with these?
9 A. I have seen these hanging up in the
10 employee break area.
11 Q. The first page is the sign --
12 A. Right.
13 Q. -- that says, "Warning, Tobacco smoke is
14 known to the State of California to cause cancer."
15 The second page of this exhibit is a memo
16 to all Yosemite Wholesale employees from management
17 dated March 31, 1993.
18 Have you ever seen that before?
19 A. No. As I said before, I'm not involved
20 with other departments or parts of the company, and this
21 is previous to my being a director.
22 Q. Right. Have you ever been to the
23 warehouse?
24 A. I have visited it, yes.
25 Q. Is this memo something that's posted there

26 next to the warning sign?
27 A. I have no idea. I didn't see any -- I
28 mean, I didn't read anything on the walls when I was
62
1 down there. I don't know.
2 Q. Do you know who wrote this memo?
3 A. I have no idea. In 1993, I wasn't even
4 aware that Yosemite existed.
5 (Mr. Foster enters.)
6 BY MR. HULBURT:
7 Q. And this memo makes the statement, "Not
8 only is smoking hazardous to the health of the smoker,
9 but more and more information in regards to the ill
10 effects of secondhand smoke are being brought to the
11 forefront. Smoke filled rooms can have as much as six-
12 times the air pollution as a busy highway. Workers
13 exposed to secondhand smoke on the job are 34 percent
14 more likely to get lung cancer. There will be 3,000
15 Americans die of lung cancer this year due to secondhand
16 smoke."
17 Can you tell me the source of any of that
18 information?
19 A. No, I cannot.
20 Q. Is it an accurate statement from your
21 perspective as a director of pharmacy for Save Mart?
22 MR. EATON: Objection.
23 MR. HULBURT: That paragraph.
24 MR. KAMMER: Objection. It's beyond the scope of
25 the deposition. I will instruct the witness not to
26 answer.
27 BY MR. HULBURT:
28 Q. Has Save Mart ever disseminated any
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1 information consistent with this paragraph, this second
2 paragraph, that I just read, any information consistent
3 with that paragraph to the public other than its own
4 employees?
5 A. Not that I am aware of.
6 Q. Have you ever thought about doing that?
7 A. No.
8 Q. Let me show you this report. It's SMS 8
9 through SMS 29. It's -- it says it's a special report
10 entitled A Look at Smoking in the Workplace, from the
11 publishers of Business and Health, published by Medical
12 Economics. This was also produced by the Save Mart
13 attorneys earlier in the case.
14 Is that something you're familiar with?
15 A. No.
16 Q. Have you ever seen it?
17 A. No.
18 Q. Other than the APhA brochures, did you
19 provide any documents to the Save Mart lawyers related
20 to this case?
21 A. The brochures, and there's a magazine that
22 we hand out, Medizine magazine.
23 Q. "I" magazine?
24 A. Medizine, M-e-d-i-z-i-n-e.
25 Q. What is Medizine magazine?
26 A. It's a free publication for customers that
27 they can pick up at the stores.
28 Q. And is that intended to be published
64
1 through the pharmacy department?

2 A. No. No. It's published by Medizine
3 publishers.
4 Q. Handed out at the pharmacy?
5 A. Right. Well, not handed out. It's picked
6 up. We just have it on the counter for anybody that
7 wants to take it.
8 Q. All right. Is that something that you
9 read before placing on the counter to disseminate to the
10 public?
11 A. No, I do not.
12 Q. How frequently is the Medizine magazine
13 published?
14 A. Quarterly.
15 Q. What types of information is in that?
16 A. Health information. Such as one issue may
17 be devoted to diabetes. Another issue might be devoted
18 to women's health, osteoporosis, or heart problems.
19 Q. Is it generally one issue per -- one
20 subject per issue?
21 A. They throw in a few other things. You
22 know, they rotate articles, and they have several
23 different articles on the same subject, different
24 aspects.
25 Q. And are the Medizine magazines available
26 at all the Save Mart stores?
27 A. The pharmacy stores only.
28 Q. That's what I meant. Are they available

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1 at all the Save Mart pharmacies?
2 A. Yes.
3 Q. Where do they come from? Where does Save
4 Mart get them?
5 A. From Medizine.
6 Q. Does Medizine do anything other than
7 publish the magazine?
8 A. I believe they have a web site, and I'm
9 not sure what other fields they're involved in.
10 Q. Why does Save Mart make the Medizine
11 magazines available to its customers?
12 A. As a customer service. One thing that
13 distinguishes us from some of the other competitors.
14 Q. Where are the Medizine magazines
15 displayed, typically?
16 A. Either in the waiting area or on the
17 brochure rack, if they have a brochure rack; or some of
18 the stores just have them sitting on the counter.
19 Q. Does Save Mart pay for the Medizine
20 magazines?
21 A. We do. Every other issue. We pay for
22 every other issues. The other issues are provided free.
23 Q. How much do you pay for the Medizine
24 magazines?
25 A. Thirty cents an issue. They're small, 5 x
26 7, I believe. Little magazines.
27 Q. Typically, approximately, how many pages?
28 A. 20 to 30.

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1 Q. Where is Medizine located? I mean, your
2 contact in order to get the magazines, where is that?
3 A. Somewhere in the Midwest. I'm not sure.
4 Q. Is it your office that deals with the
5 purchase of the Medizine magazines?
6 A. Yes, it does.

7 Q. When did Save Mart first start placing the
8 Medizine magazines in its stores?
9 A. About two years ago.
10 Q. Was it your decision to do that?
11 A. Yes, it was.
12 Q. Why?
13 A. As a customer service to the customers.
14 There's ads in the magazines and coupons in the
15 magazines for customers, and it distinguishes us from
16 the competition, that we give something else for free
17 that they don't.
18 Q. Was that something that you went looking
19 for or just one of the many things that comes across
20 your desk, and you thought that might be interesting?
21 A. It was presented to me at a conference,
22 when we had business appointments, and it did look
23 interesting. And --
24 Q. Do you keep the back issues of the
25 Medizine magazine anywhere?
26 A. No, I do not.
27 Q. Would there be any repository at Save Mart
28 so that if I said I wanted to have a copy of each issue
67
1 of Medizine magazine that was distributed at Save Mart,
2 would there be a file or a folder somewhere where you
3 could get those?
4 A. No, there is not.
5 Q. Do the magazines come through Save Mart
6 corporate and then distributed to each individual store?
7 A. It's -- the magazines are sent to three of
8 our stores, and they're distributed regionally from
9 those three stores.
10 Q. Can you tell me approximately how much
11 Save Mart spends on the Medizine magazines?
12 A. About \$1,000 a year.
13 Q. Can you tell me approximately how much
14 Save Mart spends on the APhA brochures?
15 A. I believe it was eight cents per brochure
16 through our sign shop.
17 Q. And so how many were made or how much was
18 spent on the idea of, "Let's print up a whole bunch of
19 APhA brochures"?
20 A. Probably about \$1,000.
21 Q. Have there been any reprints done by the
22 Save Mart print shop since they were first printed two
23 years ago?
24 A. No, there have not.
25 Q. Not for any of the issues?
26 A. Correct, not for any of them.
27 Q. Have there been any articles related to --
28 in smoking or environmental tobacco smoke in Medizine
68
1 magazine?
2 A. I don't know.
3 Q. Do you read each issue that is placed in
4 Save Mart stores?
5 A. No, I do not.
6 Q. Does anybody at Save Mart -- does anybody
7 have the responsibility at Save Mart to read each issue
8 of Medizine magazine so that Save Mart knows what it's
9 giving out to its customers?
10 A. No.
11 Q. To your knowledge, is there anyone at Save

12 Mart who, as a matter of course, reads each issue of
13 Medizine magazine?
14 A. To my knowledge, no.
15 Q. Is the Medizine -- do you know the address
16 of the Medizine magazine web site? Is it medizine.com?
17 A. Yes, www.medizine.com.
18 Q. Is Medizine spelled --
19 A. M-e-d --
20 Q. M-e-d-i-z-i-n-e?
21 A. Mm-hmm.
22 Q. Just like medicine with a "Z"?
23 A. Mm-hmm.
24 Q. We got into that Medizine thing with the
25 question: Other than the APhA brochures, are there any
26 other documents that you provided to your lawyers? And
27 you told me you sent a Medizine magazine.
28 A. Mm-hmm.

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1 Q. Are there any other documents that you
2 have sent to your lawyers, to the Save Mart lawyers?
3 A. Documents or brochures or --
4 Q. Yeah, documents --
5 A. Like memos or things that we had printed
6 at the office?
7 Q. "Documents" out of a lawyer's mouth is an
8 attempt to be an all-encompassing thing, which means
9 "anything."
10 MR. KAMMER: We have a terrible definition.
11 THE WITNESS: There were some other brochures
12 that I sent down that we hand out with prescription
13 medication.
14 BY MR. HULBURT:
15 Q. Related to what?
16 A. Prescriptions and health.
17 Q. What prescriptions for what?
18 A. Well, when we fill our prescriptions, we
19 print a brochure called an FYI brochure, for your
20 information, and we hand that to the patient with the
21 brochure. It has their drug monograph on it, which
22 tells them how to take the medication, what side-effects
23 to look for, how to store the medication, all the
24 information required.
25 And then it also sometimes has some
26 coupons on that, related to them. Like if they have
27 arthritis, there might be a Tylenol coupon, or it could
28 be a default message in the store to buy cards or

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1 something like that. But it's a brochure created by
2 Health Resource, which is a company that we have a
3 partnership with. And we hand those out when the
4 patient gets their prescription. For new prescriptions
5 only.
6 Q. So the FYI brochure is something that's
7 printed with each prescription?
8 A. Each new prescription.
9 Q. All right. And it's printed off a
10 computer?
11 A. Yes.
12 Q. And the personalized information will be
13 related to that customer's new prescription --
14 A. That's correct.
15 Q. -- and it will be printed on something
16 that's pre-printed with whatever the topic of the day is

17 from Health Resources?
18 A. That's correct.
19 Q. And how frequently did those topics, the
20 pre-printed topics from Health Resources, how frequently
21 do they change?
22 MR. EATON: Lacks foundation.
23 BY MR. HULBURT:
24 Q. Do you know what I mean by that?
25 A. The content?
26 Q. Yes.
27 A. It's random. It changes with each
28 brochure.

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1 Q. With each printing?
2 A. They have a set number of items that they
3 print, and it's all computerized, and I don't know how
4 many there are.
5 Q. Does it print out of a -- a printer at the
6 Save Mart store?
7 A. It's the same printer we use for our
8 labels, yes, uh-huh.
9 Q. Is it -- is the -- is the pre-printed
10 content already on the paper?
11 A. Right.
12 Q. And then there's just a space where the
13 personalized information is going to get printed?
14 A. The pre-printed information on the paper
15 on the back of the brochure, there's usually an ad for a
16 blockbuster drug like Prolisec or Claritin or something
17 like that. That's the complete back of the brochure.
18 On the other side of the brochure, it's blank until we
19 print it.
20 Q. And on some part of the brochure, there is
21 some health information?
22 A. Sometimes there is.
23 Q. Like what?
24 A. If it's a diabetic patient, it may have a
25 little thing about how to care for your feet. If it's a
26 heart -- blood pressure patient, it may tell them the
27 importance of checking their blood pressure every day.
28 That kind of thing.

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1 Q. How does one know to print the right
2 substantive content for the right customer?
3 A. There's a software system that does that
4 based on the NDC of the drug.
5 Q. So if there's a certain kind of drug
6 that's compromised for this brochure, the computer will
7 try to match that up with the right content from the
8 Health Resources brochure?
9 A. That's correct.
10 Q. Including the ad on the back and
11 including --
12 A. No. The ad is previously printed.
13 Q. All right. So including whatever the
14 substantive health information is going to be, try to
15 make that relevant to this customer's current purchase?
16 A. Exactly.
17 Q. What is Health Resources? Is that some
18 company?
19 A. Health Resources is a company. It's owned
20 by Catalina Marketing.
21 Q. Where is that?

22 A. Health Resources is in Phoenix, Arizona.
23 Q. Now, you said that Save Mart has a
24 partnership with Health Resources. What do you mean by
25 that?
26 A. For printing the brochures and handing the
27 brochures out -- we are allowed to have printers that
28 no -- they leased the printers to us at no cost that we
73
1 use in our stores, and we also share some market revenue
2 on the couponing.
3 Q. Do you pay Health Resources anything?
4 A. No.
5 Q. So they provide the printer, and they
6 provide the paper --
7 A. That's correct.
8 Q. -- and they provide the software?
9 A. That's correct.
10 Q. And in exchange, I take it, they are
11 getting paid advertising from the drug companies?
12 A. That's right.
13 Q. That's Health Resources' motivation?
14 A. That's right.
15 Q. Now, are there a certain number of
16 substantive choices on the Health Resources brochures?
17 You know --
18 A. I don't understand.
19 Q. We have got this idea that we are going to
20 try to compromise this as closely as possible to the
21 customer's recent purchase.
22 A. Mm-hmm.
23 Q. Are there eight choices to choose from or
24 10 or 20 or three --
25 A. I don't know. I don't know how many
26 choices there are. We don't do the choosing. The
27 software system does it.
28 Q. Has anyone at Save Mart reviewed the
74
1 Health Resources substantive content so that Save Mart
2 knows exactly what it's giving to its customer?
3 A. Mm-hmm, I have.
4 Q. All of it?
5 A. As new ones come out, they send them to
6 me, and I review them.
7 Q. So you have read every substantive health
8 resource brochure?
9 A. That's right.
10 Q. And approved it?
11 A. Yes.
12 Q. Is that why you read it?
13 A. Right.
14 Q. Because if you're going to hand this to
15 your customer, they think it's coming from Save Mart?
16 A. Right.
17 Q. So you want to make sure it's something
18 that Save Mart wants to say?
19 A. Mm-hmm.
20 Q. "Yes"?
21 A. Yes.
22 Q. And have any of these Health Resources
23 brochures included any information regarding smoking?
24 A. Not the ones that we hand out with the
25 prescription drugs. The patients can request other
26 ones, other brochures, about health, and there's one on

27 smoking.
28 Q. From Health Resources?
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1 A. Mm-hmm.
2 Q. "Yes"?
3 A. Mm-hmm.
4 MR. EATON: "Yes."
5 BY MR. HULBURT:
6 Q. You have to say "yes."
7 A. Yes. I'm sorry. I'm used to talking to
8 my kids.
9 Q. We all know what you are saying, but she's
10 not supposed to interpret it.
11 Why is the smoking one not one of the
12 brochures that is handed to the customer with
13 prescriptions?
14 A. It's not part of the program, and we have
15 no idea who's a smoker and who isn't a smoker. And it's
16 a separate health-related topic that customers may
17 request if they are getting a prescription. It's not
18 automatic.
19 Q. What would a customer have to say at Save
20 Mart in order to get the smoking brochure from Health
21 Resources?
22 A. On the regular brochures that are printed
23 out, every once in awhile, it will say these other
24 topics are available, and it will be random topics
25 selected, and it will have numbers and say what it is;
26 diabetes, heart disease, cholesterol.
27 The customer would have to bring the
28 brochure back and say, "I want 17, 18, or 25," or
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1 whatever it is, and the pharmacist would go to the
2 computer system, type it in, and punch a button, and it
3 would print out.
4 Q. Can you give me an estimate of the number
5 of topics there are from Health Resources available
6 through Save Mart?
7 A. I don't know.
8 Q. Can you give me a range, any estimate at
9 all?
10 A. 20, 30, something like that.
11 Q. Did you make some decision about which of
12 the Health Resources content you were going to make
13 available direct to the customers and which would be
14 available only if specifically requested?
15 A. All of those are available only if
16 specifically requested.
17 Q. All of what?
18 A. All of the extra health brochures. The
19 original brochure with the new prescription is
20 automatically handed out with every new prescription.
21 If they want any other brochure, the patient has to
22 request it. It's not automatically handed out --
23 Q. Okay.
24 A. -- on any topic.
25 Q. Can you give me an estimate of the number
26 of regular brochures that are part of the software at
27 Save Mart from Health Resources that come with
28 prescriptions?
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1 A. That come with prescriptions. Every
2 single new prescription gets a brochure with it.

3 Q. So how many choices are there? I'm back
4 to that question again.
5 A. Choices of what?
6 Q. Of what the substance is going to be on
7 the Health Resources brochure.
8 A. I have no idea.
9 Q. Can you give me an estimate?
10 A. I can't even give an estimate.
11 Q. No range?
12 A. No.
13 Q. Who is your contact at Health Resources?
14 A. Dave Miller.
15 Q. Is the company Health Resources, or is the
16 company Catalina Marketing?
17 A. Health Resources is the one that we deal
18 with.
19 Q. All right.
20 A. Catalina Marketing is the owner of Health
21 Resources.
22 Q. Do they have a web site?
23 A. I don't know.
24 Q. Are there any Health Resources brochures
25 on the subject of environmental tobacco smoke?
26 A. There's one on smoking, but I haven't read
27 it.
28 Q. Has the smoking brochure from Health

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1 Resources ever been distributed to a Save Mart customer?
2 A. You know, I really don't know.
3 Q. Is there a way to know that --
4 A. The customers -- I could probably ask
5 Health Resources to find out whether we printed any, but
6 I don't know. Very, very rarely do customers ever ask
7 for any of the extra brochures. So I really don't know.
8 Q. So you said earlier, I thought, that you
9 read all of the brochures --
10 A. When they issue --
11 Q. -- from Health Resources?
12 A. Not those extra ones.
13 Q. Have you read any of the extra ones?
14 A. In order to print -- in order to produce
15 them, you have to actually go to the computer system and
16 print them out and -- you know, and do them separately.
17 It's not something that is kept on file or available
18 anywhere. And I have never gone into a store, myself,
19 and printed them out and sat down and read them. No, I
20 haven't read them.
21 Q. Has anyone on behalf of Save Mart actually
22 read the 20, 30, 40 extra health brochures from Health
23 Resources?
24 A. I'm not aware of anyone. There may have
25 been pharmacists. I don't know.
26 Q. So how do you know that the information in
27 them is accurate and reliable?
28 A. I don't know.

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1 Q. Has anyone read the smoking brochure on
2 behalf of Save Mart, the Health Resources smoking
3 brochure?
4 A. Not that I am aware of.
5 Q. Do you have any idea what it says?
6 A. No.
7 Q. Do you know whether it's accurate?

8 A. No.
9 Q. Who writes the brochures for Health
10 Resources?
11 A. The Health Resource company has health
12 writers. A lot of their information comes from First
13 Data Bank or Medispan. And there's a third group, but I
14 don't remember the name. And they are medical writers.
15 Q. How do you know that?
16 A. Because they told me.
17 Q. Dave Miller told you that?
18 A. Yes.
19 Q. Do you do anything to review the accuracy
20 of the Health Resources brochures?
21 A. No.
22 Q. Do you rely entirely on Health Resources
23 for that?
24 A. For accuracy?
25 Q. Yes.
26 A. Yes.
27 Q. Medical accuracy?
28 A. Medical accuracy, yes.

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1 Q. Do they have any physicians on staff at
2 Health Resources that review the brochures?
3 A. Yes, they do.
4 Q. How many?
5 A. I don't know.
6 Q. How do you know they have physicians?
7 A. Because, in the past, I have seen letters,
8 and I have seen a name, and I have seen -- I have seen
9 all the titles. A lot of them are professors at
10 pharmacy schools with doctorates, and they are medical
11 physicians and other educators in the industry.
12 Q. How do you know that?
13 A. Because I was given a list and I read it
14 once, and I -- you know, I don't remember who it was,
15 but I remember seeing that.
16 Q. What do those various people do with
17 respect to these specific brochures?
18 A. They write the content and review it and
19 edit it.
20 Q. That's your understanding?
21 A. That's my understanding.
22 Q. Is there a Health Resources brochure
23 related to environmental tobacco smoke?
24 A. No, there's not.
25 Q. Why have you made it your personal
26 practice to read all the American Pharmaceutical
27 Association brochures for accuracy, but not read the
28 Health Resources brochures for accuracy?

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1 A. I don't have a good answer for that one.
2 Time? Never thought of it. Assumed that, you know, the
3 educators that are writing the brochures were the
4 experts, not myself.
5 Q. Have you found that the American
6 Pharmaceutical Association is less reliable than Health
7 Resources?
8 A. No. The reason I was reading the
9 Health -- the American Pharmaceutical Association
10 brochures was not for accuracy, but to find out if there
11 were any specific mentions of drugs that they were
12 trying to promote in those brochures, which Save Mart

13 does not want to do.
14 Q. However, Save Mart does that everytime a
15 Health Resources brochure gets printed up?
16 A. Does what?
17 Q. Advertises a specific drug?
18 A. No, we do not.
19 Q. Isn't that what's on the back of the
20 brochure?
21 A. Some of the backs of the brochure.
22 Q. The blockbuster drug, you said?
23 A. Yes, some of them.
24 Q. That's the whole point?
25 A. That's the whole point.
26 Q. The whole point of the Health Resources
27 program --
28 A. Mm-hmm.

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1 Q. -- is so that a blockbuster drug gets
2 advertised, right?
3 A. Mm-hmm.
4 MR. EATON: Lacks foundation, calls for
5 speculation.
6 THE WITNESS: Not necessarily. The point of the
7 Health Resources program for Save Mart is to provide the
8 monograph to the patient and perhaps some coupons which
9 might make them come back and spend some more money in
10 our stores.
11 BY MR. HULBURT:
12 Q. Okay. And, of course, that's what I am
13 talking about, is the monograph, and nobody at Save Mart
14 has any idea whether the monograph is accurate. Is that
15 true?
16 A. Oh, the monograph. No. I'm sorry. The
17 monograph is the patient -- is the patient information
18 with the prescription required by law. It is accurate,
19 because it's reviewed by the FDA. And it's -- the drug
20 companies have to write up that, and then they provide
21 it to the First Data Bank or Medispan, who provides it
22 to our software company, and give it to us. The
23 monograph is not at all related to advertising. It's
24 how to take the drug, the side effects, what other drugs
25 to avoid, and how to store the medication. That's the
26 monograph. That is accurate.
27 Q. So nobody at Save Mart knows whether the
28 substantive health information on the Health Resources

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1 brochure is accurate?
2 A. There's no experts at Save Mart that could
3 read it and say, "Yes, it's accurate."
4 Q. Nobody knows?
5 A. Right.
6 Q. Is there anything else that you provided
7 to the Save Mart lawyers besides the APhA brochures, the
8 Medizine magazine, and the Health Resources printout?
9 A. No.
10 Q. Of the Health Resources printout, what did
11 you send to your lawyers?
12 A. Samples of the ones that the patients can
13 request.
14 Q. Related to smoking?
15 A. There was one -- one for smoking, yes, in
16 them.
17 Q. What was the other sub -- what was the

18 other substance of the Health Resources brochures that
19 you provided?

20 A. Let's see. Asthma, you know, everything
21 that they could request. Osteoporosis. If there's a
22 disease and you name it, then on it, of the 20 and 30,
23 it's probably in there.

24 Q. You send them all?

25 A. Mm-hmm.

26 MR. HULBURT: Do we have those, Bill?

27 MR. KAMMER: You don't have them.

28 MR. HULBURT: I know I don't have them, but we

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1 specifically requested all --

2 MR. KAMMER: -- documents concerning ETS. You
3 have all documents concerning ETS.

4 THE WITNESS: There's nothing --

5 MR. HULBURT: Yeah, but that's not right. We
6 specifically requested all documents regarding the
7 health issues, including, but not limited to, any
8 discussion --

9 MR. KAMMER: No, that's a deposition topic, and
10 she's prepared to testify at the deposition on that
11 topic. It's a difference between Deposition Topic 4 and
12 the document request. We spent a lot of time going
13 through these documents to make sure that you get the
14 ones that you asked for, and you have.

15 MR. HULBURT: So you're telling me that the
16 document request does not request information related to
17 the various health issues --

18 MR. KAMMER: Correct.

19 MR. HULBURT: -- other than as it's related to
20 ETS?

21 MR. KAMMER: I'm doing the same thing you do. We
22 shouldn't interrupt before he finishes. I'm telling you
23 that that's correct. The document request covers only
24 documents related to ETS.

25 BY MR. HULBURT:

26 Q. Do any of -- Did you read the Health
27 Resources brochures, when you printed them out, in order
28 to send them to your lawyers?

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1 A. No, I did not.

2 Q. Did anybody at Save Mart?

3 A. No. I had a store print them out to send
4 them to my secretary, who put them in a FedEx, who sent
5 them down here.

6 Q. So you still have no idea what they say?

7 A. Right.

8 Q. Is there anything else that you sent to
9 your lawyers?

10 MR. EATON: Asked and answered.

11 THE WITNESS: I already said "no" to that
12 question.

13 BY MR. HULBURT:

14 Q. All right. Now, the Medizine magazine,
15 did you send just one issue of that?

16 A. That's correct.

17 Q. Was that the most recent issue?

18 A. That's correct.

19 Q. Was there anything in that issue related
20 to cigarettes or secondhand smoke or --

21 A. I'm not sure.

22 Q. Did you read it?

23 A. No.
24 Q. All right. Have you read any part of it?
25 A. The cover.
26 Q. What was the cover? What was the --
27 A. The picture of a woman.
28 Q. What's the cover article?
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1 A. Something about summer. I don't know.
2 Q. Sunscreen?
3 A. Yeah.
4 MR. KAMMER: Can we take a break now?
5 MR. HULBURT: Sure, we can take a break.
6 (A recess was taken.)
7 BY MR. HULBURT:
8 Q. Ms. Snider, do you read Medical Economics?
9 A. No, I do not.
10 Q. Have you ever subscribed to that?
11 A. No, I haven't.
12 Q. All right. Maybe we already did this, but
13 this was SMS 8 through --
14 MR. EATON: 29.
15 BY MR. HULBURT:
16 Q. -- 29, which is a special report regarding
17 smoking in the workplace published by Medical Economics.
18 Have you ever seen that?
19 A. No, I haven't.
20 Q. Save Mart in this lawsuit also produced
21 many copies of various city and county ordinances
22 regarding smoking, I guess, in some of the cities where
23 Save Mart does business. It's SMS 30 through 117. Have
24 you ever reviewed any of the local ordinances of any of
25 the cities or counties in locations where you have Save
26 Mart stores, ordinances related to smoking or smoking
27 restrictions?
28 A. No, I have not.
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1 Q. Or cigarette sales?
2 A. No, I have not.
3 Q. Have you ever participated in any efforts
4 in any communities to create smoking ordinances?
5 A. No, I have not.
6 Q. Or have you ever participated against any
7 smoking ordinances?
8 A. No, I have not.
9 Q. Also produced from Save Mart in this case
10 is a report that's Bates No. SMS 18 through 153 entitled
11 Environmental Tobacco Smoke in the Workplace, Health,
12 Legal, and Economic Impacts, published by the Bureau of
13 Business Practice. Is this something you are familiar
14 with?
15 A. No, I have never seen it before.
16 Q. In this report, it describes the EPA's
17 report regarding secondhand smoke, environmental tobacco
18 smoke. Have you ever read the EPA report or any parts
19 of it?
20 A. No, I haven't.
21 Q. Have you read any summaries of it or
22 descriptions of it or articles about it?
23 A. I have heard EPA mentioned, but I don't
24 recall reading any articles about it, specifically.
25 Q. Have you ever read any reports from NIOSH,
26 the National Institute of Occupational Safety and
27 Health --

28 A. No, I haven't. 88

1 Q. -- related to ETS?

2 A. No.

3 Q. Have you ever participated in developing

4 any smoking policies for any of the companies or stores

5 that you worked for?

6 A. No, I have not.

7 Q. Have you ever done any research as a

8 pharmacist or as part of your pharmacy training?

9 A. You mean in my entire career?

10 Q. Yeah, research.

11 A. Yes.

12 Q. Have you ever researched any subjects that

13 might in any way be related to smoking or the health

14 effects of smoking, or cigarette smoke?

15 A. No, I haven't.

16 Q. Did you do any research related to any

17 respiratory issues?

18 A. No, I haven't.

19 Q. Have you done any research related to

20 cancer?

21 A. No, I haven't.

22 Q. Is there somebody at Save Mart who is like

23 a safety officer? I don't know if that phrase means

24 anything at Save Mart, but some companies might have a

25 safety officer or a person who is responsible for the

26 overall safety and health of the employees.

27 A. As far as I know, that would be Mike

28 Silvera out of Human Resources. We do have a safety 89

1 committee, and I don't know who the head of the safety

2 committee is.

3 Q. How do you spell Mike's last name?

4 A. S-i-l-v-e-r-a.

5 Q. This stack of documents that I have from

6 Save Mart is loaded with things like these reports that

7 I am talking about, reports regarding smoking and

8 environmental tobacco smoke in the workplace, ordinances

9 regarding smoking public, motto policies for a smoke

10 free workplace, health effects of ETS, newspaper

11 articles about being exposed to smokers. Do you know

12 where in the organizational structure of Save Mart

13 information like this would generally be located?

14 A. No, I do not.

15 Q. Is this something that Mike -- I can't

16 remember Mike's last name.

17 MR. KAMMER: Silvera.

18 THE WITNESS: Silvera.

19 BY MR. HULBURT:

20 Q. Is this something that Mike Silvera to

21 your understanding would be the one to be responsible

22 for?

23 A. Possibly.

24 Q. Is there anybody else at Save Mart who you

25 think would be more likely to be the person who would

26 have knowledge regarding these issues from these reports

27 and things at Save Mart?

28 A. Well, I'm not sure who's in charge of 90

1 government affairs, but I would think that somebody from

2 government affairs would be involved with the

3 ordinances.

4 Q. There's another report here called a
5 Decision Maker's Guide to Reducing Smoking at the Work
6 Site published by U.S. Department of Health and Human
7 Services. It's SMS 193 through 216. Take a minute to
8 look at that. I will ask you if you are familiar with
9 that.
10 A. No, I have never seen this before.
11 Q. Here is one, SMS 217 through 224, entitled
12 Smoke Free Workplace, an Employer's Guide to Nonsmoking
13 Policies. I guess, first, let me ask you if you have
14 ever seen that.
15 A. No.
16 Q. It says on Page No. 219, SMS 219, it says,
17 "Some facts about smoking. The hazards of smoking are
18 not a matter of controversy." Do you agree with that
19 statement?
20 A. Yes.
21 Q. Has Save Mart ever publicly disclosed or
22 made a statement to the public to that effect, that the
23 hazards of smoking are not a matter of controversy?
24 A. Not in those words, but that sign that you
25 showed -- that was posted in the lounge, you know --
26 Q. The sign for Yosemite?
27 A. The one -- the State of California, you
28 know, says that smoking causes cancer.

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1 Q. Okay. That was Exhibit 4037?
2 A. Right.
3 Q. This is posted in the stores?
4 A. In the break rooms, mm-hmm.
5 Q. For the customers -- I mean for the
6 employees?
7 A. For the employees.
8 Q. So my question is, has Save Mart ever
9 disseminated the information to the public that the
10 hazards of smoking are not a matter of controversy?
11 A. I don't know.
12 Q. The first sentence below that says, "There
13 is no longer any disagreement among scientists that
14 smoking tobacco, particularly cigarettes, is extremely
15 hazard." Do you agree with that statement?
16 A. I agree.
17 Q. The next heading is Cigarette Smoke can
18 be -- I'm sorry -- Cigarette Smoke can Harm Nonsmokers,
19 too. Do you agree with that statement?
20 MR. EATON: Objection. Calls for expert
21 testimony, lacks foundation, also beyond the scope.
22 MR. KAMMER: I'm going to object on the scope,
23 and instruct the witness not to answer.
24 BY MR. HULBURT:
25 Q. The first sentence below, it says,
26 "Involuntary smoking, the exposure of nonsmokers to
27 other's smoke, is now considered a serious health
28 hazard."

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1 MR. KAMMER: Same objection. Same instruction.
2 BY MR. HULBURT:
3 Q. Has Save Mart ever disseminated any
4 information substantively similar to that sense to the
5 public?
6 A. I don't know.
7 Q. Or to any of its customers?
8 A. I don't know.

9 Q. The sentence below that says, "Indeed,
10 cigarette smoke is widely recognized as the most serious
11 indoor air pollutant, leading cause of exposure to toxic
12 chemicals for most workers." Do you agree with that
13 statement?
14 MR. KAMMER: Same objection. Same instruction
15 not to answer.
16 BY MR. HULBURT:
17 Q. Has Save Mart ever disseminated
18 information consistent with that sentence to any of its
19 customers?
20 A. I don't know.
21 Q. The next heading is Smoking is an
22 Addiction. Do you agree with that statement?
23 MR. KAMMER: Same objection, same instruction.
24 BY MR. HULBURT:
25 Q. Does Save Mart sell products that are
26 designed to ease the effects of the addictive qualities
27 of cigarettes?
28 MR. EATON: Objection. Assumes facts not in

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1 evidence.
2 MR. DI SAIA: Calls for expert opinion.
3 MR. EATON: Join.
4 MR. KAMMER: You can answer if you know the
5 answer.
6 THE WITNESS: The question, the way it was
7 phrased, is kind of confusing.
8 BY MR. HULBURT:
9 Q. Does Save Mart pharmacy sell products,
10 drugs, which are designed to ease the effects of the
11 addictive qualities of cigarettes so that a smoking
12 customer can stop smoking?
13 A. Oh.
14 MR. EATON: Same objections.
15 THE WITNESS: When you said, "ease the effects,"
16 I mean, there's a difference between stopping smoking
17 and easing the effects of smoking while you continue to
18 smoke. So that's why I was confused. We don't sell
19 anything that eases the effects of a person who is
20 smoking, but there are products that Save Mart sells
21 that help a person to quit if they want to quit.
22 BY MR. HULBURT:
23 Q. Various drugs?
24 A. Right.
25 Q. All right. And those are products that
26 Save Mart sells because it's been determined that
27 cigarettes are addictive?
28 MR. EATON: Objection. Calls for expert opinion,

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1 lacks foundation.
2 MR. DI SAIA: Calls for speculation.
3 BY MR. HULBURT:
4 Q. Right?
5 MR. KAMMER: You can answer.
6 MR. EATON: Same objections.
7 THE WITNESS: I don't know why Save Mart sells
8 those products other than they're making a profit on
9 them.
10 BY MR. HULBURT:
11 Q. Do you know why those products are
12 prescribed?
13 MR. EATON: Same objections.

14 THE WITNESS: Some are prescribed, and some are
15 not.
16 BY MR. HULBURT:
17 Q. All right. Well, let's talk about the
18 prescription -- only the prescription drugs would go
19 through the Save Mart pharmacy. Is that right?
20 A. Prescription drugs, right.
21 Q. So let's talk about prescription drugs.
22 Does Save Mart pharmacy sell prescription drugs which
23 are designed to help people stop smoking to offset the
24 addictive qualities of the cigarettes?
25 MR. EATON: Objection. Lacks foundation, calls
26 for speculation.
27 THE WITNESS: They don't really offset the
28 addictive properties. What they do is help a person not

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1 want to smoke. There's a difference between, you know,
2 working straight on the addiction, and then also easing
3 the craving. And that's what it does. It makes them
4 ease the craving.
5 BY MR. HULBURT:
6 Q. Are you talking about Nicorette?
7 A. No. Actually, I'm talking about Zyban or
8 Prozac or Wellbutrin or several other pills. Most of
9 the patches have been moved to over-the-counter drugs
10 now and are no longer required prescription.
11 Q. All right. So Ease the Craving is a
12 treatment in order to ease the effects of the addiction?
13 MR. EATON: Same objections. Calls for expert
14 testimony.
15 THE WITNESS: I'm not sure when you say the
16 "effects" of the addiction. I mean, addiction is
17 addiction, not that addiction has effects or doesn't
18 have effects.
19 BY MR. HULBURT:
20 Q. How about ease the addiction?
21 MR. EATON: Same objections.
22 BY MR. HULBURT:
23 Q. When you say ease the craving, is that
24 synonymous with ease the addiction?
25 MR. EATON: Same objection.
26 THE WITNESS: According to what I know, there's
27 different medical terminologies for craving and
28 addiction.

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1 BY MR. HULBURT:
2 Q. Does Save Mart sell products designed to
3 treat a smoker's addiction to cigarettes?
4 MR. EATON: Assumes facts not in evidence, calls
5 for expert testimony, lacks foundation, calls for
6 speculation.
7 MR. KAMMER: You can answer.
8 THE WITNESS: Yes.
9 BY MR. HULBURT:
10 Q. What would that be?
11 A. Different pharmaceutical medications, such
12 as Zyban.
13 Q. Where are the cigarettes displayed at Save
14 Mart stores?
15 A. I'm not aware of every store, but I have
16 seen them up front by the checkstands in a locked case.
17 Q. Have you seen any cigarette advertising in
18 Save Mart stores?

19 A. You know, I don't -- I don't really
20 remember. I mean, there may be signs like -- you know,
21 light signs that have cigarette companies on them, but I
22 don't pay attention to that. So I'm not sure.
23 Q. Have you seen in cigarette -- I'm sorry.
24 Have you seen in Save Mart stores any
25 displays that are promoting sweepstakes for cigarette
26 companies or cigarette company products or --
27 A. I have seen, on packs of cigarettes, as I
28 go through the checkstand, yeah, little signs there

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1 about, you know, get clothes or enter to win or stuff
2 like that with the cigarettes.

3 MR. EATON: Move to strike as nonresponsive.

4 BY MR. HULBURT:

5 Q. That's exactly what I am asking about.
6 Have you seen in Save Mart stores things related to
7 cigarette company clothes or products or gym bags or
8 coffee mugs or T-shirts, things like that?

9 MR. KAMMER: I'm going to object to this line of
10 questioning, beyond the scope of the witness'
11 designation, and instruct the witness not to answer any
12 more questions of this sort.

13 BY MR. HULBURT:

14 Q. Other documents produced by Save Mart were
15 SMS 225 through 251, which is an American Lung
16 Association report regarding environmental tobacco
17 smoke, a smoke free workplace.

18 A. Mm-hmm.

19 Q. Are you familiar with that?

20 A. No, I have never seen it before.

21 Q. SMS 252, provided by Save Mart in this
22 case, is a one-page document entitled "There are over
23 200 gases found in cigarette smoke, chemical substances
24 found in cigarettes," listing a whole bunch of things, I
25 guess, which are components of cigarette smoke.

26 Have you ever seen that before?

27 A. No, I haven't.

28 Q. Are you familiar with the -- any of the

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1 components of cigarette smoke?

2 A. Yes, I am.

3 Q. How?

4 A. Newspaper articles, magazines, common
5 knowledge.

6 Q. How about from any of your professional
7 associations or professional journals?

8 A. I'm sure there are articles I have read
9 that talk about the components.

10 Q. How about from any of your training; was
11 there anything covered in any of your training related
12 to cigarette smoke or environmental tobacco smoke?

13 A. Absolutely not. I went to school so long
14 ago; so cigarette smoking was an accepted thing.

15 Q. People were still smoking in class? Were
16 they smoking in class?

17 A. No, that, they didn't allow.

18 Q. Has Save Mart ever disseminated any
19 information to the public consistent with what's shown
20 here on SMS 252 --

21 A. I don't know.

22 Q. -- regarding all these chemicals that are
23 in cigarette smoke?

24 A. I don't know.
25 Q. There's an article here from the
26 California Physicians Journal, SMS 254, entitled
27 Secondhand Smoke is a Killer. Have you read that?
28 A. No, I haven't.

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1 Q. Do you agree with that statement?
2 MR. EATON: Objection.
3 MR. KAMMER: Objection. Beyond the scope of the
4 topics, and I will instruct the witness not to answer.
5 BY MR. HULBURT:
6 Q. Has Save Mart ever done any research
7 regarding any of the effects of the tobacco products
8 that it sells?
9 A. I don't know.
10 Q. Has Save Mart ever done any research
11 regarding the environmental tobacco smoke?
12 MR. DI SAIA: Calls for speculation.
13 MR. KAMMER: I'm going to object to the question,
14 because it's an area in which the witness has not been
15 designated as a topic, and instruct the witness not to
16 answer.
17 BY MR. HULBURT:
18 Q. Does Save Mart have in its possession any
19 research regarding environmental tobacco smoke?
20 A. I don't know.
21 Q. Does the pharmacy department?
22 A. No.
23 MR. HULBURT: The letter that -- Bill, the letter
24 that we got yesterday from Charles Houston said that
25 Ms. Snider was designated for Topic 4 and 12, and 12 --
26 MR. KAMMER: 4 and 13.
27 MR. HULBURT: 12 is all about profits.
28 MR. KAMMER: 13 is pharmacy guidelines,

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1 procedures, and practices. That must be a typographical
2 error.
3 MR. HULBURT: I'm eager to ask --
4 MR. KAMMER: I will instruct the witness not to
5 answer as to Topic 12. I need to talk to Chuck.
6 MR. HULBURT: It's right here.
7 MR. KAMMER: I understand. Poor Chuck. I will
8 make him come to the next few.
9 MR. HULBURT: I have nothing further.
10 MR. KAMMER: Thank you. I have no questions.
11 Excuse me.
12 MR. EATON: I have no questions.
13 MR. DI SAIA: I have no questions.
14 MR. KAMMER: I have no questions.
15 Can we do the same stipulations that you
16 and I agreed to last time? I think Danny was there.
17 MR. DI SAIA: I'm sure I will like them.
18 MR. EATON: Standard stipulations.
19 MR. KAMMER: Yeah, standard. Then we can go off
20 the record.
21 (Whereupon, the deposition was adjourned at 11:30 a.m.)
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1 I hereby declare under penalty of perjury that
2 the foregoing is my deposition under oath; that these
3 are the questions asked of me and my answers thereto;
4 that I have read my deposition and have made the
5 necessary corrections, additions, or changes to my
6 answers that I deem necessary.

7 In witness thereof, I hereby subscribe my name
8 this day of _____, _____.

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10 _____
11 MICHELE SNIDER
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1 STATE OF CALIFORNIA)
2 :SS
3 COUNTY OF SAN DIEGO)
4

5 I, Cynthia Depweg, CSR NO. 3280, hereby
6 certify that I reported in shorthand the above
7 proceedings on Tuesday, June 6, 2000, at 401 B Street,
8 Suite 1700, in the City of San Diego, County of San
9 Diego, State of California; and I do further certify
10 that the above and foregoing pages, numbered from 5
11 through 101, inclusive, contain a true and correct
12 transcript of all of said proceedings.

13 It was stipulated that the original deposition
14 be delivered to Mr. Kammer for the purpose of having the
15 witness read, correct, and sign the deposition under the
16 penalty of perjury; said original thereafter to be
17 maintained by Mr. Kammer until the time of trial.

18 Dated: June 19, 2000.

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22 _____
23 CYNTHIA DEPWEG
24 CSR NO. 3280
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